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Editorial Note: The printed version of the **Federal Register** Table of Contents for February 4, 2016, included an entry for Amendment of Class E Airspace: Lisbon, ND under Federal Aviation Administration. This document was not published in the February 4, 2016 issue of the **Federal Register.**

Separate Parts In This Issue

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.

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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.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. APHIS–2015–0061]

RIN 0579–AE14

Conditions for Payment of Highly Pathogenic Avian Influenza Indemnity Claims

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for highly pathogenic avian influenza (HPAI). Specifically, we are providing a formula that will allow us to split such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. This action is necessary to ensure that all contractors are compensated appropriately. We are also providing for the payment of indemnity for eggs required to be destroyed due to HPAI, thus clarifying an existing policy. Finally, we are requiring owners and contractors, unless specifically exempted, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises.

DATES: This interim rule is effective February 9, 2016. We will consider all comments that we receive on or before April 11, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0061.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0061* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Troy Bigelow, Senior Staff Veterinarian, Surveillance, Preparedness and Response Services; VS, APHIS, Federal Building, Room 891, 210 Walnut Street, Des Moines, IA 50309; (515) 284–4121.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) administers regulations at 9 CFR part 53 (referred to below as the regulations) that provide for the payment of indemnity to owners of animals that are required to be destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, Newcastle disease, highly pathogenic avian influenza (HPAI), infectious salmon anemia, or any other communicable disease of livestock or poultry that, in the opinion of the Secretary of Agriculture, constitutes an emergency and threatens the U.S. livestock or poultry population. Payment for animals destroyed is based on the fair market value of the animals at the time of their destruction.

Section 53.2 of the regulations authorizes the APHIS Administrator to cooperate with a State in the control and eradication of disease. Paragraph (b) of this section allows for the payment of indemnity to cover the costs for purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease.

Section 53.3 provides for the appraisal of such animals and materials. Paragraph (a) of § 53.3 states that the appraisals shall be carried out by an APHIS employee and a representative of the State jointly, or, if the State authorities approve, by an APHIS employee alone. Under § 53.3(b), the appraisal must be based on the fair market value and shall be determined by the meat, egg production, dairy, or breeding value of such animals.

Section 53.10 provides conditions under which payments will not be made on indemnity claims. Such conditions include, but are not limited to, noncompliance by the claimant with all quarantine requirements, as well the violation of laws, regulations, or cooperative agreements pertaining to movement or handling of animals by the animals' owner or employee or agent. Payments will also be disallowed for claims arising out of the destruction of animals or materials if those animals and materials have not been appraised in accordance with part 53 or if the owner has not executed a written agreement to the appraisals.

Highly Pathogenic Avian Influenza

There are many strains of avian influenza (AI) virus that can cause varying degrees of clinical illness in poultry. AI viruses can infect chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds. AI viruses can be classified as highly pathogenic or low pathogenic (LPAI) strains based on the severity of the illness they cause. HPAI is an extremely infectious and fatal form of the disease that, once established, can spread rapidly from flock to flock. Certain strains of AI have the potential to affect humans.

The U.S. poultry industry recently experienced a severe outbreak of HPAI. The outbreak was discovered in December 2014 in backyard flocks in the Pacific Northwest, and in two commercial turkey and chicken flocks in California. As of August 2015, 21 States had had HPAI detections in backyard flocks, commercial premises, captive wild birds, and/or wild birds. Established U.S. animal health policy is to eliminate notifiable AI virus (both HPAI and LPAI strains), when it is

found, through depopulation (*i.e.,* destruction and disposal) of affected poultry. APHIS, State, and local animal health officials euthanize poultry, clean and disinfect premises and equipment, and then test for elimination of the virus to ensure that farms can be safely restocked.

Payment of Indemnity

During the 2014–2015 outbreak, APHIS has been paying the full indemnity amount to the birds' owners—usually the poultry company—with the understanding that parties that have entered into contracts with the owners to grow or care for the animals would then be paid by the owner in accordance with contractual agreements. During the course of addressing the current 2015 outbreak, we determined that the existing regulations in part 53 do not specify that the indemnity be split between owners and contractors. Since both owners and contractors incur losses when a flock is depopulated, both should be compensated appropriately.

A similar gap in the regulations concerning the payment of indemnity for LPAI became an issue for APHIS during an outbreak of LPAI in Virginia in 2002. In an interim rule published in the **Federal Register** on November 4, 2002, and effective December 9, 2002 (67 FR 67089–67096, Docket No. 02–048–1), we amended the regulations to allow the Department to pay indemnity to both contract growers and owners for poultry destroyed because of LPAI. That interim rule was followed by a final rule that provided for LPAI indemnity payments to owners and contractors.

Following approval by delegates during the 2004 National Poultry Improvement Plan (NPIP) Conference, APHIS amended the regulations via an interim rule [1] effective and published in the **Federal Register** on September 26, 2006 (71 FR 56302–56333, Docket No. APHIS–2005–0109), to establish a voluntary control program for the H5/H7 subtypes of LPAI under the auspices of the NPIP. Among other things, that interim rule established a new 9 CFR part 56 to provide for the payment of indemnity for costs associated with the eradication of H5/H7 LPAI.

First established under that interim rule, § 56.8 contains conditions for payments to flock owners and parties with which the owners contracted to grow and care for poultry and eggs. The section provides a formula for the distribution by APHIS of LPAI indemnity payments between owners and contractors.

Due to the absence, noted above, of a provision in part 53 for split indemnity payments prior to this interim rule, there was the possibility of contractors not being compensated for losses incurred as a result of our HPAI control efforts during the 2014–2015 outbreak. APHIS believes it is important to ensure that all participants in the poultry industry with a stake in the continued health of the U.S. poultry stock are compensated for costs associated with eradication of HPAI, as well as LPAI. In this interim rule, therefore, we are incorporating into the HPAI regulations in part 53 conditions from the LPAI regulations in § 56.8 for the splitting of indemnity payments between owners and contractors. Only those conditions that are applicable to HPAI will be incorporated into part 53. These conditions are contained in a new § 53.11, titled ''*Highly pathogenic avian influenza; conditions for payment.*'' Some of the text in the new section that has been drawn from § 56.8 has been edited slightly for clarity.

Paragraph (a) of 53.11 provides a formula to enable the Administrator to determine the share of the indemnity payment that should be disbursed to the contractor. This is a two-step process. The dollar value of the contract the owner entered into with the contractor will be divided by the duration of the contract in days as it was signed prior to the HPAI outbreak. The resulting figure will then be multiplied by the time in days between the date the contractor began to provide services relating to the destroyed poultry or eggs under the contract and the date the poultry or eggs were destroyed.

Paragraph (b) states that if a contractor has received any payment under his or her contract from the owner of the poultry or eggs at the time the poultry or eggs are destroyed, the amount of indemnity from APHIS for which the contractor will be eligible will be reduced by the amount of the payment the contractor has already received from the owner. This provision will ensure that contractors will not receive indemnity payments that exceed the fair market value of the poultry or eggs.

Under § 53.11(c), if indemnity is paid to a contractor, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the contractor and the total amount of indemnity that may be paid for the poultry or eggs. This provision ensures that the owner will receive a fair share of the indemnity.

Finally, § 53.11(d) states that if the Administrator determines that the method described in § 53.11(a) for determining the amount of indemnity to be paid to a contractor, proves to be impractical or inappropriate in a particular case, APHIS may use any other method that the Administrator deems appropriate to determine the amount of indemnity due a contractor. This paragraph provides the Administrator with the flexibility to distribute indemnity payments equitably between owner and contractor in unusual or especially complex cases.

The above-listed conditions will allow contractors, as well as poultry and egg owners, to be compensated for economic losses suffered due to the destruction of poultry and eggs resulting from HPAI outbreaks.

Prior to this interim rule, the regulations in part 53 covered the destruction and indemnification of eggs under the general term ''materials.'' APHIS has covered eggs as being materials. To provide greater clarity, we are adding references to eggs to § 53.2(b), § 53.3(a), § 53.9, and § 53.10(c) and (d).

We are also adding a new paragraph (e) to § 53.3, pertaining to the appraisal of the value of eggs destroyed due to HPAI. As is the case for the animals themselves, under § 53.3(e), indemnity payments for eggs required to be destroyed due to HPAI will be based on the fair market value of the eggs, as determined by an appraisal. Appraisals will be reported on forms furnished by APHIS. The amount of indemnity paid, together with the amount for net salvage the owner or contractor received, if any, may not exceed the appraised fair market value of the eggs. Salvage refers to any payment the owner or contractor may receive from a third party, such as a breaker facility for the eggs. Such facilities may purchase the eggs and then pasteurize them to kill the HPAI virus, so that the eggs can be used in food products. APHIS will subtract the amount of any such payments made to the owners or contractors from the indemnity amount paid out by APHIS.

In addition, because § 53.4 has not specifically provided for the destruction of eggs pursuant to the eradication of HPAI, we are adding a new paragraph (b) (currently reserved) to that section. The paragraph states that eggs infected with, exposed to, or contaminated by HPAI shall be disposed of pursuant to the regulations in part 53 under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a report identifying all eggs disposed thereof.

[1] To view the interim rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2005-0109.*

Biosecurity

In some instances during the 2014–2015 outbreak, poor biosecurity practices may have led to HPAI introduction or spread within and among some commercial poultry facilities. More specifically, as discussed in our July 2015 report on HPAI-infected flocks (*https://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/downloads/Epidemiologic-Analysis-June-15-2015.pdf*), the existing level of biosecurity appears to have failed to protect layer and turkey facilities in the upper Midwest from HPAI. In our view, the biosecurity of layer, turkey, and broiler facilities needs to be enhanced to avoid future catastrophic outbreaks of HPAI.

As a step toward achieving the goal of enhancing biosecurity, this interim rule requires both owners of poultry or eggs and contractors to provide to APHIS a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan. Indemnity claims will be denied if the owner or contractor, unless exempted, does not provide such a statement. This requirement will be placed in a new paragraph (g) to be added to § 53.10, the section in part 53 that covers claims not allowed

Paragraph (g)(1) contains a list of several measures that a biosecurity plan should include in order to be effective at preventing the introduction of HPAI to a poultry facility. First, personnel working at such a facility should be given appropriate biosecurity training and should be subject to certain biosecurity requirements, *e.g.,* showering and changing upon, or prior to arriving at, the facility. The biosecurity plan should also include measures to prevent HPAI introduction via vehicles and equipment. A ''line of separation'' should be maintained, beyond which nothing should cross that could introduce the virus to poultry houses. Measures to control wild birds, rodents, and insects should be implemented, and the facility should have a source of clean water. More detailed information regarding these biosecurity measures for poultry facilities can be found at *https://iastate.app.box.com/Biosec-Officer-Info-Manual.* Educational and training materials for poultry-industry personnel are available at *http://www.poultrybiosecurity.org/.*

The inclusion of the measures discussed above in an HPAI biosecurity plan is supported by the findings of our September 2015 report on HPAI-infected flocks (*https://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/downloads/Epidemiologic-Analysis-September2015.pdf*). For example, in that report, statistical evidence was found that having visitors follow biosecurity protocols, such as changing clothes before entering a barn, and having premises personnel disinfect barn entry areas were both associated with a lowered risk of introducing HPAI to the premises.

Under paragraph (g)(2), owners and contractors will be exempted from the requirement to submit a biosecurity statement if their facilities fall under one of the following categories: Premises covered under the NPIP regulations in 9 CFR 146.22(b) (commercial table-egg laying premises with fewer than 75,000 birds) or § 146.52(b) (raised for release upland game bird and waterfowl premises that raise fewer than 25,000 birds annually) and premises where fewer than 100,000 broilers or 30,000 turkeys are raised for meat annually. Exempting such facilities will allow APHIS to concentrate on helping large commercial facilities with their biosecurity activities. These larger operations were hardest hit by the 2015 outbreak, and are in the best position to address biosecurity issues. More than 99 percent of broilers are raised on farms with more than 100,000 birds, and 97 percent of turkeys are raised on farms with more than 30,000 birds. In addition, the smaller facilities that we are exempting from the requirement are less likely to have HPAI outbreaks than are the non-exempt ones. On smaller facilities, birds density tends to be less which minimizes overall viral load. Additionally, if a smaller facility was identified with HPAI the disease is less likely to spread outward to other premises because there are fewer birds, vehicles, pieces of equipment, and employees moving onto and off of the smaller, exempted facilities when compared to the larger, non-exempted ones.

To facilitate owners' and contractors' biosecurity planning, APHIS has created and distributed biosecurity training materials, which include specific examples of approaches to developing and implementing biosecurity protocols for the various types of commercial poultry operations. Further, we are increasing outreach to all producers—large, small and backyard—to educate them about biosecurity plans and how they can be implemented at the local level.

APHIS is phasing in implementation and documentation of enhanced biosecurity through a biosecurity self-assessment. Initially, commercial poultry owners and contractors will be asked to voluntarily self-assess, whether their operations have implemented the measures in a general biosecurity checklist developed by APHIS (*http://www.uspoultry.org/animal_husbandry/assessment.cfm*). Next, each owner and/or contractor should develop a risk-based, site-specific biosecurity plan that includes standard operating procedures and a site-specific checklist. This step will be followed by the development of a plan for Federal, State, or industry-led oversight of the biosecurity plan and a mechanism for verification. We welcome comments from the public regarding the development of procedures for the oversight and verification of the biosecurity plan.

Miscellaneous

In addition to adding the references to eggs to § 53.2(b), we are making a couple of minor edits to the paragraph for the sake of clarity. We are incorporating footnote 1 into the text and editing one clause of the paragraph that, as written, could be interpreted as referring to the ineligibility of the animals covered by the paragraph, rather than their owners, to receive indemnity payments. The clause has been revised for accuracy, and we have also added a reference to contractors, in keeping with the other changes we are making to part 53.

Emergency Action

This rulemaking is necessary on an emergency basis to provide timely and equitable compensation to owners and contractors for flocks destroyed due to the disease, which may reoccur in 2016. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This interim rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this interim rule. The

economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS is amending the regulations to include conditions for the splitting of HPAI indemnity payments when multiple parties are involved in order to ensure that all parties who suffer losses resulting from the destruction of poultry or eggs due to HPAI are compensated and compensation is distributed to parties who suffer losses based on the terms of the contract. The vast majority of contracts are expected to reflect the relative level of inputs or investments of the parties who suffer losses. This interim rule also clarifies that APHIS will pay indemnity for eggs destroyed due to HPAI and requires owners and contractors, unless exempted because their facilities are small, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a written biosecurity plan to address the potential spread of HPAI.

The entities affected by this interim rule will be U.S. facilities primarily engaged in breeding, hatching, and raising poultry for meat or egg production, and facilities primarily engaged in slaughtering poultry. There were about 25,000 farms categorized as breeding, hatching, or raising poultry for meat production, about 28,000 farms categorized as egg producers, and 517 poultry processors in the 2012 Agricultural Census. In particular, this rule will affect poultry owners and contractors who produce poultry under production contracts. It is estimated that 97 percent of broilers were raised on production contract operations in 2011.[2] Of the farms producing broilers and other meat-type chickens, about 15,350 accounted for more than 99 percent of the total number of broilers sold in 2012 according to the Agricultural Census.

The United States is the world's largest poultry producer and the second-largest egg producer. The combined value of production from broilers, eggs, turkeys, and the value of sales from chickens in 2014 was $48.3 billion, up 9 percent from $44.4 billion in 2013. Of the combined total, 68 percent was from broilers, 21 percent from eggs, 11 percent from turkeys, and less than 1 percent from chickens.[3] Broiler production, valued at over 50 billion pounds per year, is concentrated in a group of States stretching from Delaware, south along the Atlantic coast to Georgia, then westward through Alabama, Mississippi, and Arkansas. The U.S. turkey industry produces over one-quarter of a billion birds annually. Production of turkeys is somewhat more scattered geographically than broiler production, with Minnesota, North Carolina, Missouri, Arkansas and Virginia the top five turkey-producing States. U.S. laying hen operations produce over 90 billion eggs annually. The top five egg-producing States are Iowa, Ohio, Pennsylvania, Indiana, and Texas.

In 2014, the United States exported nearly 4 million metric tons (MT) of poultry meat valued at about $5 billion. The vast majority of exports consisted of chicken meat. Export demand for U.S. broiler products has fluctuated over the last several years because of changing economic conditions and currency exchange rates. Since the first HPAI findings in December 2014, a number of trading partners have imposed complete or partial bans on shipments of U.S. poultry and products.

Broilers account for nearly all U.S. chicken consumption. Broiler production and processing occurs within highly integrated production systems. Owners of the processing facilities own, as well, the birds that are processed and contract with growers (contractors) to raise those birds before processing. The top 20 owners together accounted for 94 percent of all broilers produced in the United States in 2012, and the top 3 accounted for 49 percent.

Expanded broiler production has been made possible to a large extent by the vertically integrated production system and through the use of production contracts. Almost all commercial operations raising broilers are contract growers.[4]

Under the system of production contracts, the contractor normally supplies the grow-out house with all the necessary heating, cooling, feeding, and watering systems. The contractor also supplies the labor needed in growing the birds. The owner normally supplies the chicks, feed, veterinary medicines and transportation. Contractors have exclusive contracts with an owner and receive payment for the services that they provide, with premiums and discounts tied to the efficiency with which feed is converted to live-weight broilers, the minimization of mortality, or the number of eggs produced. Specific contract terms and the period covered can vary.

Embedded in the value of a bird at any point in time is the value of inputs by both parties. Contractors' costs are more or less fixed and are heavily committed early in the production cycle. Investments in poultry housing cannot be shifted readily to other farming activities.

Currently, indemnity payments go directly to the owner of the birds who, depending on the terms of the contractual arrangement, might or might not compensate the contractor. It is important to formalize provisions to share indemnity payments between poultry owners and contractors, both of whom have productive assets imbedded in the value of the bird. When USDA pays to compensate owners and contractors for losses, that compensation should be distributed to parties who suffer losses based on the terms of the contract.

APHIS' determination of the total amount of indemnity will remain the same under the interim rule as at present, based on the appraised value of the bird or eggs, the number of birds depopulated or eggs destroyed, and the age of the birds when depopulated. However, to determine the appropriate payment split between owner and contractor, APHIS may have to examine contract specifics on a case-by-case basis. This interim rule will not change the total amount of compensation paid in a given situation, but will ensure timely distribution of that compensation between the owner and contractor. This interim rule will benefit contractors who otherwise may suffer uncompensated economic losses from participating in an eradication program.

[2] 2011 USDA Agricultural Resource Management Survey, Version 4.

[3] USDA, NASS. Poultry Production and Value, 2014 Summary. April 2015.

[4] MacDonald, J.M. *Technology, Organization, and Financial Performance in U.S. Broiler Production*, EIB–126 USDA Economic Research Service. June 2014.

To date, the generic term ''materials'' within the existing regulations in part 53 has been used to provide for indemnification for eggs required to be destroyed pursuant to HPAI eradication efforts. This rule will specify appropriate references to eggs, and a description of the appraisal of the value of eggs destroyed due to HPAI to the regulations. The rule will therefore simply clarify existing practice for the indemnification of destroyed eggs and will not change the total amount of any compensation paid in a given future situation.

The vast majority of contractors have some level of biosecurity in place on their operations. This rule will require large owners and contractors to provide a statement that a written biosecurity plan was in place and was followed if HPAI is detected at their facilities. There are approximately 18,900 poultry operations that will be subject to this requirement. Many operations will need to review their existing biosecurity plans, and some will need to newly develop plans. We estimate that the development of a biosecurity plan could cost between about $525 and $700, while the review of an existing plan could cost about $70. If 5 percent of producers need to newly develop biosecurity plans and 95 percent need to review existing biosecurity plans, the total one-time cost for all producers could be between $1.7 million and $1.9 million.

Most producers should be readily able to affirm that they were following a biosecurity plan in the case of an HPAI incident. We estimate that an owner or contractor will need at most about 0.25 to 0.50 hours to comply with this affirmation requirement, at a cost of $8.73 to $17.45 per occurrence. The total cost of this affirmation requirement will depend on the number of producers affected by a given HPAI outbreak who submit paperwork to receive indemnity. If a given outbreak were to affect 100 flocks, the total cost of this affirmation requirement would be from about $900 to $1,800 and if a given outbreak were to affect 500 flocks, the total cost would be from about $4,400 to $8,800 when rounded up to the nearest hundred.[5]

It should be noted that these total cost estimates are limited to the cost of developing or reviewing biosecurity plans and providing a statement attesting that a biosecurity plan was in place and followed. Because this rule does not require the implementation of specific biosecurity measures, the costs associated with implementing new biosecurity measures are not included in these totals. We expect that most producers already have or will voluntarily adopt new biosecurity measures prior to the interim rule becoming effective.

APHIS is distributing biosecurity training materials that include specific examples of approaches to developing and implementing biosecurity protocols for various types of commercial poultry operations. APHIS is phasing in enhanced biosecurity initially through voluntary self-assessments. Results of self-assessments in the fall of 2015 show that a significant majority of poultry producers have in place or are in the process of implementing a variety of recommended biosecurity practices. Development, following public input, of Federal, State or industry-led oversight and verification will follow.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number.

Please send written comments on the information collection and recordkeeping requirements included in this interim rule to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2015–0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2015–0061 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations to provide for the equitable distribution of indemnity payment to owners and contractors by the Department for the depopulation of poultry and destruction of eggs known to be infected with HPAI and to require that, in order to receive indemnity payments, owners and contractors, unless specifically exempted, must submit a statement indicating that they had in place and were following a biosecurity plan at the time of HPAI detection in their facilities. In addition to submitting the biosecurity statement, owners and contractors must sign a payment, appraisal and agreement form and must certify as to whether any other parties hold mortgages on the flock. This interim rule also clarifies that eggs are a commodity eligible for indemnity.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.626 hours per response.

Respondents: States; Poultry and egg owners and contractors.

Estimated annual number of respondents: 35,925.

Estimated annual number of responses per respondent: 1.9336.

Estimated annual number of responses: 69,456.

Estimated total annual burden on respondents: 112,950 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

[5] One hundred flocks * $8.73 = $873, 100 flocks * $17.45 = $1,745, 500 flocks * $8.73 = $4,365 and 500 flocks * $17.45 = $8,725.

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this interim rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

Accordingly, we are amending 9 CFR part 53 as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

■ 1. The authority citation for part 53 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 53.2, paragraph (b) is revised to read as follows:

§ 53.2 Determination of existence of disease; agreements with States.

* * * * *

(b) Upon agreement of the authorities of the State to enforce quarantine restrictions and orders and directives properly issued in the control and eradication of such a disease, the Administrator is hereby authorized to agree, on the part of the Department, to cooperate with the State in the control and eradication of the disease, and to pay 50 percent (and in the case of Newcastle disease or highly pathogenic avian influenza, up to 100 percent, and in the case of infectious salmon anemia, up to 60 percent) of the expenses of purchase, destruction and disposition of animals, eggs, and materials required to be destroyed because of being contaminated by or exposed to such disease: *Provided, however, that* if the animals or eggs were exposed to such disease prior to or during interstate movement and the owners or parties contracting with the owners to raise or care for the animals or eggs are not eligible to receive indemnity from any State, the Department may pay up to 100 percent of the purchase, destruction, and disposition of animals, eggs, and materials required to be destroyed; *Provided further,* that the cooperative program for the purchase, destruction, and disposition of birds shall be limited to birds which are identified in documentation pursuant to Agreements between the Department and the particular State involved relating to cooperative animal (including poultry) disease prevention, control, and eradication, as constituting a threat to the poultry industry of the United States; *And provided further,* that the Secretary may authorize other arrangements for the payment of such expenses upon finding that an extraordinary emergency exists.

■ 3. Section § 53.3 is amended as follows:

■ a. By revising the section heading.

■ b. In paragraph (a), by adding the words ''or eggs'' after the word ''Animals''.

■ c. By adding paragraph (e).

The addition and revision read as follows:

§ 53.3 Appraisal of animals, eggs, or materials.

* * * * *

(e) Indemnity for eggs required to be destroyed due to an outbreak of highly pathogenic avian influenza will be based on the fair market value of the eggs, as determined by an appraisal. Appraisals of eggs shall be reported on forms furnished by APHIS. The amount of indemnity paid, together with the amount for net salvage the owner or contractor received, if any, shall not exceed the appraised fair market value of the eggs.

■ 4. Section 53.4 is amended as follows:

■ a. By revising the section heading.

■ b. By adding paragraph (b).

The addition and revision read as follows:

§ 53.4 Destruction of animals or eggs.

* * * * *

(b) Eggs infected with, exposed to, or contaminated by highly pathogenic avian influenza shall be disposed of pursuant to the regulations in this part under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a report identifying all eggs disposed thereof.

* * * * *

■ 5. Section 53.9 is amended as follows:

■ a. The section heading is revised.

■ b. By adding the word '', eggs,'' after the word ''animals'' each time it appears.

The revision reads as follows:

§ 53.9 Mortgage against animals, eggs, or materials.

* * * * *

■ 6. Section 53.10 is amended as follows:

■ a. In paragraphs (c) and (d), by adding the word '', eggs,'' after the word ''animals'' each time it appears.

■ b. By adding paragraph (g).

The addition reads as follows:

§ 53.10 Claims not allowed.

* * * * *

(g) The Department will not allow claims arising out of the destruction of animals or eggs destroyed due to an outbreak of highly pathogenic avian influenza unless the owner of the animals or eggs and any party that enters into a contract with the owners to grow or care for the poultry or eggs, unless exempted under paragraph (g)(2) of this section, provide to APHIS a statement that at the time of detection of highly pathogenic avian influenza in the facility, the owner and contractor (if applicable), had in place and was following a biosecurity plan.

(1) The biosecurity plan should include the following:

(i) A biosecurity training program for premises/farm personnel;

(ii) Biosecurity protocols for personnel;

(iii) Procedures to control wild birds, rodents, and insects to reduce the risk of introduction or spread of HPAI;

(iv) Measures taken to prevent HPAI introduction via vehicles and equipment;

(v) Maintenance of a line of separation; and

(vi) A clean water source for the facility.

(2) Owners and contractors are exempted from the requirements of paragraph (g)(1) of this section if the facilities where the animals or eggs are raised or cared for falls under one of the following categories:

(i) Premises meeting the criteria of the National Poultry Improvement Plan regulations in §§ 146.22(b) or 146.52(c) of this chapter;

(ii) Premises on which fewer than 100,000 broilers are raised annually; and

(iii) Premises on which fewer than 30,000 meat turkeys are raised annually.

* * * * *

■ 7. Section 53.11 is added to read as follows:

§ 53.11 Highly pathogenic avian influenza; conditions for payment.

(a) When poultry or eggs have been destroyed pursuant to this part, the Administrator may pay claims to any party with whom the owner of the

poultry or eggs has entered into a contract for the growing or care of the poultry or eggs. The indemnity the Administrator may pay to such a party or parties shall be determined as by the following method:

(1) Divide the value in dollars of the contract the owner entered into with the contractor by the duration in days of the contract as it was signed prior to the highly pathogenic avian influenza outbreak;

(2) Multiply this figure by the time in days between the date the contractor began to provide services relating to the destroyed poultry or eggs under the contract and the date the poultry or eggs were destroyed due to highly pathogenic avian influenza.

(b) If a contractor receiving indemnity under this section has received any payment under his or her contract from the owner of the poultry or eggs at the time the poultry or eggs are destroyed, the amount of indemnity for which the contractor is eligible will be reduced by the amount of the payment the contractor has already received.

(c) If indemnity is paid to a contractor under this section, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the contractors and the total amount of indemnity that may be paid for the poultry or eggs.

(d) In the event that determination of indemnity due a contractor using the method described in paragraph (a) of this section is determined to be impractical or inappropriate, APHIS may use any other method that the Administrator deems appropriate to make that determination.

Done in Washington, DC, this 3rd day of February 2016.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2016–02530 Filed 2–8–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–2843; Directorate Identifier 2015–SW–003–AD; Amendment 39–18392; AD 2016–03–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding airworthiness directive (AD) 2014–13–01 for Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB–BK 117 C–2 helicopters with a certain Goodrich rescue hoist damper unit (damper unit) installed. AD 2014–13–01 required repairing or replacing the damper unit or deactivating the rescue hoist. AD 2014–13–01 was prompted by a report of an uncommanded detachment of a damper unit from the cable. This new AD retains the optional requirement of deactivating the rescue hoist, expands the applicability, and requires either replacing or modifying the damper unit with a newly developed single-piece retainer. These actions are intended to prevent the hoist damper unit detaching from the cable resulting in loss of an external load or person from the helicopter hoist and injury to persons being lifted by the hoist.

DATES: This AD becomes effective February 24, 2016.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of February 24, 2016.

We must receive comments on this AD by April 11, 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–2016–2843; 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, the European Aviation Safety Agency (EASA) AD, any incorporated by reference service information, 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 final rule, contact Airbus Helicopters, 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.

FOR FURTHER INFORMATION CONTACT: David N. Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, 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 resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, 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 them 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 rulemaking during the comment period. We will consider all the comments we

receive and may conduct additional rulemaking based on those comments.

Discussion

On June 13, 2014, we issued AD 2014–13–01, Amendment 39–17875 (79 FR 36635, June 30, 2014), to correct an unsafe condition for Airbus Helicopters Model MBB–BK 117 C–2 helicopters with certain part-numbered damper units installed. AD 2014–13–01 required either repairing the damper unit, replacing the damper unit with a repaired damper unit, or deactivating the rescue hoist system.

AD 2014–13–01 was prompted by AD No. 2014–0057, dated March 6, 2014, and corrected March 7, 2014, issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA advised that a damper unit detached from the cable when the hoist damper was lifted by hand with no load attached. According to EASA, the retaining ring inside the damper unit was not located in the proper position because of a maintenance error or as a result of interference with the bonding strap unit during normal use. To address this unsafe condition, EASA AD No. 2014–0057 required modifying the bonding strap unit installation with an improved retaining ring and post-modification repetitive inspection.

Actions Since AD 2014–13–01 Was Issued

Since we issued AD 2014–13–01, a damper unit with the improved retaining ring detached from its strap. Additionally, this damper unit was approved for installation on Airbus Helicopters Model MBB–BK 117 D–2 helicopters. EASA issued Emergency AD No. 2015–0019–E, dated February 5, 2015, which superseded EASA AD No. 2014–0057, to add Model MBB–BK117 D–2 helicopters to the applicability. Airbus subsequently introduced a new single-piece retainer part number (P/N) B851M2060201 to strengthen the interconnection of the damper unit and attached cable.

EASA has revised Emergency AD No. 2015–0019–E by issuing EASA AD No. 2015–0019R1, dated February 13, 2015, for Model MBB–BK117 C–2 and MBB–BK117 D–2 helicopters with a Goodrich external mounted hoist. EASA AD No. 2015–0019R1 introduces installation of single-piece retainer P/N B851M2060201 as an option for compliance and allows installation of damper units provided if equipped with the new single-piece retainer.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Emergency Alert Service Bulletin (ASB) No. ASB MBB–BK117 C–2–85A–041, Revision 4, dated February 12, 2015, for Model MBB–BK 117 C–2 helicopters and Emergency ASB No. ASB MBB–BK117 D–2–85A–002, Revision 1, dated February 12, 2015, for Model MBB–BK 117 D–2 helicopters. These Emergency ASBs specify replacing the split retainers with a single-piece retainer and re-identifying the damper housing.

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.

AD Requirements

This AD requires, before the next hoist operation, either replacing the damper unit with a unit that has been repaired in accordance with the service information, deactivating the rescue hoist, or replacing each split retainer with a single-piece retainer and marking the damper housing in accordance with the service information.

Costs of Compliance

We estimate that this AD affects 137 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. We estimate it takes 1 work-hour to replace a damper unit and $8,715 for the required parts for a total cost of $8,800 per helicopter. We estimate it takes 0.5 work-hour to deactivate a rescue hoist for a total cost of $43 per helicopter. We estimate it takes 2 work-hours to replace the split retainer with a single-piece retainer and $171 for the required parts for a total cost of $341 per helicopter.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be completed before the next hoist operation.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, 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 removing Airworthiness Directive (AD) 2014–13–01, Amendment 39–17875 (79 FR 36635, June 30, 2014), and adding the following new AD:

2016–03–05 Airbus Helicopters Deutschland GmbH: Amendment 39–18392; Docket No. FAA–2016–2843; Directorate Identifier 2015–SW–003–AD.

(a) Applicability

This AD applies to Model MBB–BK 117 C–2 and MBB–BK 117 D–2 helicopters with a Goodrich hoist damper unit, part number (P/N) 44307–480, 44307–480–1, or 44307–480–2 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as uncommanded detachment of the external hoist damper unit, which could result in loss of an external load or person from the helicopter hoist, resulting in injury to persons being lifted by the hoist.

(c) Affected ADs

This AD supersedes AD 2014–13–01, Amendment 39–17875 (79 FR 36635, June 30, 2014).

(d) Effective Date

This AD becomes effective February 24, 2016.

(e) 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.

(f) Required Actions

Before the next hoist operation, comply with paragraph (f)(1), (f)(2), or (f)(3) of this AD:

(1) Replace the split retainers and re-identify each hoist damper unit in accordance with the Accomplishment Instructions, paragraph 3.B.1, of Airbus Helicopters Emergency Alert Service Bulletin (ASB) No. ASB MBB–BK117 C–2–85A–041, Revision 4, dated February 12, 2015, or Emergency ASB No. ASB MBB–BK117 D–2–85A–002, Revision 1, dated February 12, 2015, as applicable to your model helicopter; or

(2) Replace each hoist damper unit with a unit that has been repaired as required by paragraph (f)(1) of this AD; or

(3) Deactivate the rescue hoist system.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: David N. Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 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

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0019R1, dated February 13, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–2843.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(j) 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) Airbus Helicopters Emergency Alert Service Bulletin (ASB) No. ASB MBB–BK117 C–2–85A–041, Revision 4, dated February 12, 2015.

(ii) Airbus Helicopters Emergency ASB No. ASB MBB–BK117 D–2–85A–002, Revision 1, dated February 12, 2015.

(3) For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 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.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 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 January 29, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–02233 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3805; Directorate Identifier 2015–NE–28–AD; Amendment 39–18389; AD 2016–03–02]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Turbomeca S.A. ARRIEL 2C, 2C1, 2C2, 2S1, and 2S2 turboshaft engines with modification TU34 or TU34A installed. This AD requires inspecting the torque conformation box (TCB) for correct resistance values and removing TCBs that fail inspection before further flight. This AD was prompted by TCB failures. We are issuing this AD to prevent failure of the TCB, loss of engine thrust control, and damage to the helicopter.

DATES: This AD becomes effective March 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 15, 2016.

ADDRESSES: For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3805.

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–2015–3805, 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 mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on November 5, 2015 (80 FR 68475). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several cases of torque conformation box (TCB) failures have been reported on engines incorporating mod TU34 or mod TU34A. Investigation concluded that these failures were caused by cracks on soldered joints of TCB resistors.
>
> This condition, if not corrected, could lead to limited power availability in a One Engine Inoperative (OEI) case, possibly resulting in reduced control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 68475, November 5, 2015).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information Under 1 CFR Part 51

Turbomeca S.A. has issued Mandatory Service Bulletin (MSB) No. 292 72 2860, Version A, dated July 15, 2015. The MSB describes procedures for checking TCB resistance values. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this final rule.

Costs of Compliance

We estimate that this AD affects 300 engines installed on helicopters of U.S. registry. We estimate that it would take about 1 hour to perform an inspection. We also estimate that 20% of these engines would fail the inspection and require TCB removal, which would take about 1 hour. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $30,600.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–03–02 Turbomeca S.A.: Amendment 39–18389; Docket No. FAA–2015–3805; Directorate Identifier 2015–NE–28–AD.

(a) Effective Date

This AD becomes effective March 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Turbomeca S.A. ARRIEL 2C, 2C1, 2C2, 2S1, and 2S2 turboshaft engines with modification TU34 or TU34A installed.

(d) Reason

This AD was prompted by torque conformation box (TCB) failures. We are issuing this AD to prevent failure of the TCB, loss of engine thrust control, and damage to the helicopter.

(e) Actions and Compliance

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

(1) Within 600 engine flight hours (EFHs) or 6 months after the effective date of this AD, whichever occurs first, check the resistance values on the TCB. Use Accomplishment Instructions, paragraph 2.3.2 of Turbomeca S.A. Mandatory Service Bulletin 292 72 2860, Version A, dated July 15, 2015, to do the inspection. Repeat this inspection every 600 EFHs since last inspection.

(2) Remove before further flight any TCB that fails the inspection required by paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Brian Kierstead, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *brian.kierstead@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0177, dated August 25, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3805.

(h) 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) Turbomeca S.A. Mandatory Service Bulletin No. 292 72 2860, Version A, dated July 15, 2015.

(ii) Reserved.

(3) For Turbomeca S.A. service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information 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 Burlington, Massachusetts, on February 2, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–02477 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3778; Directorate Identifier 2015–NE–27–AD; Amendment 39–18391; AD 2016–03–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 turbofan engines. This AD requires recalculating the cyclic life for certain engine life-limited rotating parts and removing those parts that have exceeded their cyclic life limit within specified compliance times. This AD was prompted by a review of operational data that determined certain RR RB211–535E4–37 engines have been operated to a more severe flight profile than is consistent with the flight profile used to establish the cyclic life limits for the rotating parts. We are issuing this AD to prevent failure of life-limited rotating parts, uncontained parts release, damage to the engine, and damage to the airplane.

DATES: This AD becomes effective March 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 15, 2016.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://customers.rolls-royce.com/public/rollsroycecare.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3778.

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–2015–3778; 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 mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on November 4, 2015 (80 FR 68284). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A review of operational flight data has revealed that some RB211–535 engines may have been operated beyond the flight profile (FP) assumed by the operator when establishing the operational limits (life limits) within which the corresponding critical parts are allowed to remain installed.
>
> This condition, if not corrected, may lead to critical part failure, possibly resulting in release of high energy debris, damage to the aeroplane and/or injury to the occupants.

To preclude failure of an engine life-limited part, the MCAI specifies, and this AD would require, recalculating the cyclic life for certain parts and removing from service those parts that have exceeded their cyclic life limit within specified compliance times. This AD would establish a new default Flight Profile G for RR RB211–535E4–37 engine life-limited parts. If, however, operators meet the requirements of Appendix 6 of RR Alert Non-Modification Service Bulletin (NMSB) No. RB.211–72–AH972, Revision 3, dated August 28, 2015, they may operate to Flight Profile A or B. You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3778.

Related Service Information Under 1 CFR Part 51

We reviewed RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015. The Alert NMSB describes a new flight profile, provides procedures for the consumed cyclic life corrections for prior operation of affected parts, and provides the removal from service recommendations for parts that have exceeded their cyclic life limit. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the NPRM (80 FR 68284, November 4, 2015)

The Boeing Company, FedEx, United Airlines, and American Airlines expressed support for the NPRM.

Request To Change Actions and Compliance

United Parcel Service (UPS) requested that the NPRM recognize digital flight data taken from either the digital flight data recorder (DFDR) or the digital flight data acquisition unit (DFDAU) as valid data for RR RB211 flight profile monitoring purposes. The data captured by the DFDAU is recorded on the DFDR, but DFDAUs are regularly downloaded for UPS' flight operations quality assurance program. The DFDAU data is easier to access than pulling a DFDR for data download purposes.

We agree. We added a new paragraph to paragraph (e)(1) of this AD as follows: ''(e)(1)(iv) You may use data from either a digital flight data acquisition unit or a digital flight data recorder for flight profile monitoring.''.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 107 engines installed on airplanes of U.S. registry. Pro-rated cost of the lost cyclic life as a result of the corrections would be about $25,417,324. We estimate it will take 1 hour to recalculate the consumed cyclic life and revise the engine records which include 5 minutes (0.083 hours) for record entries. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $25,426,419.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–03–04 Rolls-Royce plc: Amendment 39–18391; Docket No. FAA–2015–3778; Directorate Identifier 2015–NE–27–AD.

(a) Effective Date

This AD becomes effective March 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 turbofan engines.

(d) Reason

This AD was prompted by a review of operational data that determined that certain RR RB211–535E4–37 engines have been operated to a more severe flight profile than is consistent with the flight profile used to establish the cyclic life limits for the rotating parts. We are issuing this AD to prevent failure of life-limited rotating parts, which could result in uncontained parts release, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done. Within 21 days after the effective date of this AD:

(1) For RR RB211–535E4–37 engines, establish a new flight profile, Flight Profile G, as the new default profile for flight operations and new part lives for life-limited parts.

(i) Use Appendix 6 of RR Alert Non-Modification Service Bulletin (NMSB) No. RB.211–72–AH972, Revision 3, dated August 28, 2015, to define Flight Profile G.

(ii) Use the definition of Flight Profile G in Appendix 6 and the maximum approved cyclic lives in Appendix 2 of RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015, to identify the new lives for life-limited parts.

(iii) If operators meet the requirements of Appendix 6 of RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015, they may operate to Flight Profile A or B.

(iv) You may use data from either a digital flight data acquisition unit or a digital flight data recorder for flight profile monitoring.

(2) For all RR RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 engines, determine if any part identified by part number and serial number in Appendix 4 of RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015, is installed on the engine.

(i) Do not return to service any engine with a part identified in paragraph (e)(2) of this AD after the part reaches the ''Compliance Time'' date or cycles, whichever occurs first, as specified in Appendix 4 of RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015.

(ii) For each part identified in paragraph (e)(2) of this AD without a ''Compliance Time'' that has a lifing correction identified, apply the lifing correction for each part using the ''Additional Life Consumed Flight Cycles'' specified in Appendix 4 of RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015.

(3) For RR RB211–535E4–37 engines operated to Flight Profile G with parts listed in Appendix 4 of RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015, do the following:

(i) Re-calculate the consumed cyclic life of the low-pressure (LP) compressor shaft, LP turbine shaft, LP turbine disk Stage 2,

intermediate-pressure compressor rotor shaft Stage 1 to 6, high-pressure (HP) compressor rotor disk Stage 1 and 2, HP compressor rear rotor shaft assembly, and HP turbine disk as follows.

(ii) Determine the Flight Profile G cycles in service (CIS). Count all CIS accumulated since April 1, 2015, inclusive.

(iii) Use the Flight Profile G cycles in service from paragraph (e)(3)(ii) of this AD, the maximum approved lives in Appendix 2 of RR Alert NMSB No. RB.211–72–AH972, Revision 3, dated August 28, 2015, and Figure 1 to paragraph (e) of this AD to calculate the new consumed cyclic lives.

Figure 1 to Paragraph (e), Calculations to Move Group 'A' and Group 'B' Parts Between Engine Marks and/or Flight Profiles

Step (a) Calculate the fraction of the components life used (FLU) in each of the original Engine Marks (EM) or flight profiles (FP)

$$FLU1 = \frac{\text{Cycles in 1st EM or FP}}{\text{1st EM or FP Declared Life}}$$

$$FLU2 = \frac{\text{Cycles in 2nd EM or FP}}{\text{2nd EM or FP Declared Life}}$$

$$FLUn = \frac{\text{Cycles in nth EM or FP}}{\text{nth EM or FP Declared Life}}$$

Continue until the FLU has been calculated for all Engine Marks and flight profiles in which the component has been operated

Step (b) Calculate the total fraction of life used (TFLU)

TFLU = FLU1 + FLU2 + ... + FLUn

Step (c) Calculate equivalent cycles since new (CSN) for the component in the new Engine Mark or flight profile

Equivalent CSN = TFLU x Declared Life in the new Engine Mark or flight profile

Step (d) If required, calculate the cycles remaining to the Declared Life in the new Engine Mark or flight profile

Cycles remaining = Declared Life in the new Engine Mark or flight profile − Equivalent CSN

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE–AD–AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0148, dated July 23, 2015 (Corrected July 24, 2015), for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–3778.

(h) 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) Rolls-Royce (RR) Alert Non-Modification Service Bulletin No. RB.211–72–AH972, Revision 3, including Appendices 1 through 6, dated August 28, 2015.

(ii) Reserved.

(3) For RR service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://customers.rolls-royce.com/public/rollsroycecare.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information 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 Burlington, Massachusetts, on February 2, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–02476 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice: 9360]

RIN 1400–AD83

Passports: Official Passports for Officials or Employees of State, Local, Tribal or Territorial Governments Traveling Abroad and Carrying Out Official Duties in Support of the U.S. Government

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State finalizes its amendment of the passport rules for issuance of an official passport to an official or employee of a state,

local, tribal, or territorial government traveling abroad to carry out official duties in support of the U.S. government.

DATES: Effective February 9, 2016.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, *kottmyeram@state.gov,* 202–647–2318.

SUPPLEMENTARY INFORMATION: This rule was published as an interim rule on May 15, 2015 (80 FR 27856), with a 60-day period for public comments. No public comments were received.

As explained in the interim final rule, 22 CFR 51.3(b) provides that an ''official passport'' may be issued to: An official or employee of the U.S. government traveling abroad to carry out official duties; spouses and family members of such persons; and, when authorized by the Department of State, U.S. government contractors traveling abroad to carry out official duties on behalf of the U.S. government.

Increasingly, the federal government utilizes officials or employees of state, local, tribal, and territorial governments in support of federal activities, both domestically and overseas, such as the Federal Bureau of Investigation's Joint Terrorism Task Force. When required to travel internationally in support of such federal activities, these individuals are not currently eligible for official passports. Issuance of an official passport to such individuals signifies to foreign governments that they are carrying out official duties in support of the U.S. government. The activities undertaken by these officials are often of pressing national security, law enforcement, or humanitarian importance and occur with little advance notice. It is in the U.S. government's interest to provide these individuals the travel documents necessary to allow them to travel in a timely manner.

Under 22 U.S.C. 211a *et seq.,* the Secretary of State has the authority to make rules for the granting and issuance of passports. The Department is amending section 51.3(b) of 22 CFR to authorize issuing official passports to an official or employee of a state, local, tribal, or territorial government traveling abroad to carry out official duties in support of the U.S. government.

Regulatory Findings

The Regulatory Findings included in the interim final rule are incorporated herein.

List of Subjects in 22 CFR Part 51

Passports.

Accordingly, the interim rule amending 22 CFR part 51 which was published at 80 FR 27857 on May 15, 2015, is adopted as a final rule without change.

Patrick F. Kennedy,

Under Secretary for Management.

[FR Doc. 2016–02576 Filed 2–8–16; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0090]

Drawbridge Operation Regulation; Youngs Bay, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Oregon State highway bridge across Youngs Bay foot of Fifth Street, mile 2.4, at Astoria, OR. The common name of this bridge is Old Youngs Bay Bridge. The deviation is necessary to accommodate extensive maintenance and restoration efforts on this bridge. This deviation allows the double bascule span to operate in a single leaf mode when at least a three-hour advance notification is given by marine vessels that require an opening, and the vertical clearance of the bridge to be reduced.

DATES: This deviation is effective from 7 a.m. on February 15, 2016 to 11 p.m. on June 15, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0090] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Steven M. Fischer, Thirteenth Coast Guard District Bridge Program Administrator, telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation (ODOT) requested to reduce the vertical clearance of the Old Youngs Bay Bridge, mile 2.4, across Youngs Bay foot of Fifth Street at Astoria, OR, and to open half of the draw span when at least a three-hour notice is given to the bridge operator by vessels wishing to pass. The requested period of deviation is from 7 a.m. on February 15, 2016 to 11 p.m. on June 15, 2016. The deviation is necessary to accommodate extensive maintenance and restoration efforts on this bridge. The Old Youngs Bay Bridge provides a vertical clearance approximately 19 feet above mean high water when in the closed-to-navigation position. The double bascule span of the bridge will have a containment system installed which will reduce the vertical clearance by 5 feet from 19 feet above mean high water to 14 feet above mean high water. The normal operating schedule can be found in 33 CFR 117.899(b). The deviation allows the double bascule span of the Old Youngs Bay Bridge to operate single leaf when at least three-hours of notice are given by mariners requiring an opening during the deviation period. Waterway usage on Youngs Bay is primarily small recreational boaters and fishing vessels.

Vessels able to pass through the bridge in the closed positions may do so at any time. The bridge will be able to open for emergencies if a three-hour notice is given to the bridge operator, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: February 3, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–02486 Filed 2–8–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0784, FRL–9940–19–Region 9]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District; Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD or District) portion of the California State Implementation Plan (SIP). These revisions concern administrative and procedural requirements to obtain preconstruction permits which regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 11, 2016 without further notice, unless the EPA receives adverse comments by March 10, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2015–0784, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ya-Ting (Sheila) Tsai, EPA Region IX, (415) 972–3328, *Tsai.Ya-Ting@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted or revised by the SBCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted/ revised	Submitted
SBCAPCD	201	Permits Required	06/19/2008	10/20/2008
SBCAPCD	203	Transfer	04/17/1997	03/10/1998
SBCAPCD	204	Applications	04/17/1997	03/10/1998
SBCAPCD	206	Conditional Approval of Authority to Construct or Permit to Operate	10/15/1991	01/28/1992

On November 18, 2008, the EPA determined that the submittal for SBCAPCD Rule 201 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On May 21, 1998, the submittals of Rules 203 and 204 were found to meet the completeness criteria. On April 28, 1992, the submittal for Rule 206 was found to meet the completeness criteria.

B. Are there other versions of these rules?

Table 2 lists the dates of the SIP approved versions of Rules 201, 203 and 206. There is no previous version of Rule 204 approved in the SIP, although the SBCAPCD adopted and revised an earlier version of this rule on April 17, 1997, and CARB submitted it to us on March 10, 1998. We approved an earlier version of Rule 201 into the SIP on May 5, 1982. The SBCAPCD adopted revisions to the SIP-approved version on April 17, 1997 and CARB submitted it to us on March 10, 1998. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

TABLE 2—SIP APPROVED RULES

Local agency	Rule No.	Rule title	SIP approval date	**Federal Register** citation
SBCAPCD	201	Permits Required	05/05/1982	47 FR 19330
SBCAPCD	203	Transfer	05/18/1981	46 FR 27116
SBCAPCD	206	Conditional Approval of Authority to Construct or Permit to Operate	05/18/1981	46 FR 27116

C. What are the purposes of the submitted rules?

Section 110(a) of the CAA requires States to submit regulations that will assure attainment and maintenance of the National Ambient Quality Air Quality Standards (NAAQS). These rules were developed as part of the local agency's general programmatic requirement to implement the requirement commonly referred to as the minor or general New Source Review (NSR) program. The revisions made by the submitted rules listed in Table 1 are mostly administrative in nature. New Rule 204 lists information required to apply for an Authority to Construct (ATC) or a Permit to Operate (PTO). Rule 201 has been reformatted for clarity. Several additions were also made to add provisions related to state law. Rules 203 and 206 have been reformatted with minor revisions for clarity. There are no substantive changes to these rules.

The TSD has more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). The submitted rules, except Rule 204, are revisions to existing SIP approved general NSR permit program requirements under 40 CFR 51.160–51.164. The revisions are primarily administrative in nature (reformatting, provide additional clarity), but we also discuss the rules or portions of each rule, that serve to satisfy any of these general permit program requirements. Rule 204 contains requirements for ATC and PTO applications improving the clarity of the general NSR permit program.

B. Do the rules meet the evaluation criteria?

These rules are consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. These changes are mostly administrative in nature and their approval will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement.

The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 10, 2016, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 11, 2016. This action will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SBCAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The EPA will submit a report containing this action

and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 3, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(51)(xiii)(E), (F), and (G), (c)(187)(i)(E), (c)(254)(i)(C)(*6*) and (*7*), and (c)(361)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(51) * * *

(xiii) * * *

(E) Previously approved on May 18, 1981 in paragraph (c)(51)(xiii)(A) of this section and now deleted with replacement in paragraph (c)(187)(i)(E)(*1*) of this section, Rule 206.

(F) Previously approved on May 18, 1981 in paragraph (c)(51)(xiii)(A) of this section and now deleted with replacement in paragraph (c)(254)(i)(C) of this section, Rules 203 and 204.

(G) Previously approved on May 18, 1981 in paragraph (c)(51)(xiii)(A) of this section and now deleted with replacement in paragraph (c)(361)(i)(A)(*4*) of this section, Rule 201.

* * * * *

(187) * * *

(i) * * *

(E) Santa Barbara County Air Pollution Control District.

(*1*) Rule 206, ''Conditional Approval of Authority to Construct or Permit to Operate,'' Revised October 15, 1991.

* * * * *

(254) * * *

(i) * * *

(C) * * *

(*6*) Rule 203, ''Transfer,'' revised April 17, 1997.

(*7*) Rule 204, ''Applications,'' revised April 17, 1997.

* * * * *

(361) * * *

(i) * * *

(A) * * *

(*4*) Rule 201, ''Permits Required,'' revised June 19, 2008.

* * * * *

[FR Doc. 2016–02417 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0715; FRL–9941–16–Region 9]

Approval and Promulgation of Implementation Plans; California; San Joaquin Valley Unified Air Pollution Control District; Employer Based Trip Reduction Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a regulation submitted for incorporation into the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP). The regulation, Rule 9410 (Employer Based Trip Reduction), establishes requirements for employers in the San Joaquin Valley to implement programs encouraging employees to use ridesharing and alternative transportation methods to reduce air pollution. The effect of this action is to make the requirements of Rule 9410 federally enforceable as part of the California SIP.

DATES: This rule will be effective on March 10, 2016.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2014–0715 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action

On August 24, 2015 at 80 FR 51153, the EPA proposed to approve the following rule into the California SIP.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	9410	Employer Based Trip Reduction	12/17/09	05/17/10

We proposed to approve this rule because we determined that it complied with the relevant Clean Air Act (''CAA'' or ''Act'') requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, which ended on September 23, 2015, we received one comment from a member of the public. We are summarizing that comment and providing our response below.

Comment: The commenter supports the rule and the District's goal of encouraging transportation alternatives to driving to work alone. But the commenter states that, although the supporting documents provide satisfactory information about how commuter programs can reduce air pollution, ''when reviewing the available information in the docket folder, [the commenter] noticed a lack of solutions to the problem of this particular facet of pollution in the primary document.'' The commenter asks whether this means that ''solutions have yet to be identified or fully planned.''

Response: Section 5 of Rule 9410 suggests trip reduction strategies that covered employers may choose to implement, including transit programs and ride-sharing opportunities, among others. Employers must identify which of these specific trip reduction strategies they will adopt, and report the results of their efforts annually to the SJVUAPCD. In today's action, EPA is not approving specific trip reduction plans for individual employers, but is approving the general requirements in Rule 9410 that direct employers to develop trip reduction plans.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SJVUAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA had made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 11, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, title 40 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(379)(i)(C)(7) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(379) * * *

(i) * * *

(C) * * *

(*7*) Rule 9410, ''Employer Based Trip Reduction,'' adopted on December 17, 2009.

* * * * *

[FR Doc. 2016–02411 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0756; FRL–9941–11–Region 9]

Approval of California Air Plan Revisions, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) from gasoline dispensing facilities and stationary gas turbines. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on April 11, 2016 without further notice, unless the EPA receives adverse comments by March 10, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2015–0756 at *http://www.regulations.gov,* or via email to *Steckel.Andrew@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972 3073, *Gong.Kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this action with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
YSAQMD	2.22	Gasoline Dispensing Facilities	01/14/14	06/26/15
YSAQMD	2.34	Stationary Gas Turbines	11/12/14	06/26/15

On August 13, 2015, the EPA determined that the submittal for YSAQMD Rules 2.22 and 2.34 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of Rule 2.22 into the SIP on January 23, 2003 (68 FR 3190), and an earlier version of Rule 2.34 into the SIP on September 3, 1998 (63 FR 46892).

C. What is the purpose of the rule revisions?

VOCs help produce ground-level ozone, smog and PM, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The revisions to Rule 2.22 exempt certain categories of facilities that have other vapor recovery control measures in place, require aboveground storage tanks to install additional approved vapor recovery systems, require Phase II enhanced vapor recovery systems at all dispensing facilities, and require operators to conduct appropriate inspection and maintenance procedures.

NO_X helps produce ground-level ozone, smog and PM, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. The revisions to Rule 2.34 define new operation requirements during start-up and shut-down of units and during short-term exceedances under specific circumstances, and require facilities to install continuous emissions monitoring systems.

The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document

as well as each major source of VOCs and NO_X in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2)). YSAQMD regulates an ozone nonattainment area classified as Severe for the 2008 8-hour National Ambient Air Quality Standard (40 CFR 81.305). Therefore, Rules 2.22 and 2.34 must implement RACT.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (57 FR 13498, April 16, 1992 and 57 FR 18070, April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations'' (''the Bluebook,'' U.S. EPA, May 25, 1988; revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies'' (''the Little Bluebook'', EPA Region 9, August 21, 2001).
4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule'' (''the NO_X Supplement,'' 57 FR 55620, November 25, 1992).
5. ''Design Criteria for Stage 1 Vapor Control Systems,'' (EPA–450/R–75–102).
6. ''Technical Guidance—Stage II Vapor Recovery Systems for Control of Refueling Emissions at Gasoline Dispensing Facilities,'' (EPA–450/3–91–022).
7. ''Restatement to Update of EPA's SSM Policy Applicable to SIPs,'' (80 FR 33839, June 12, 2015).
8. ''Alternative Control Techniques Document—NO_X Emissions from Stationary Gas Turbines,'' (EPA–453/R–93–007).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, Reasonably Available Control Measures, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule(s)

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 10, 2016, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 11, 2016. This will incorporate these rules into the federally enforceable SIP. These rules will supersede the existing SIP-approved rules.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the YSAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 24, 2015.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(199)(i)(E)(*3*), (c)(303)(i)(B)(*3*), and (c)(463)(i)(B)(*2*) and (*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(199) * * *

(i) * * *

(E) * * *

(*3*) Previously approved on September 3, 1998, in paragraph (c)(199)(i)(E)(*1*) of this section and now deleted with replacement in paragraph (c)(463)(i)(B)(*3*) of this section, Rule 2.34, ''Stationary Gas Turbines,'' adopted on July 13, 1994.

* * * * *

(303) * * *

(i) * * *

(B) * * *

(*3*) Previously approved on January 23, 2003, in paragraph (c)(303)(i)(B)(*1*) of this section and now deleted with replacement in paragraph (c)(463)(i)(B)(*2*) of this section, Rule 2.22, ''Gasoline Dispensing Facilities,'' revised on June 12, 2002.

* * * * *

(463) * * *

(i) * * *

(B) * * *

(*2*) Rule 2.22, ''Gasoline Dispensing Facilities,'' revised on January 14, 2015.

(*3*) Rule 2.34, ''Stationary Gas Turbines,'' revised on November 12, 2014.

* * * * *

[FR Doc. 2016–02421 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2015–0309; FRL–9941–82–OAR]

RIN 2060–AS68

Protection of Stratospheric Ozone: Revisions To Reporting and Recordkeeping for Imports and Exports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on minor conforming edits to the stratospheric protection regulations to implement the International Trade Data System. This system allows businesses to transmit the transactional data required by multiple Federal agencies for the import and export of cargo through a single ''window.'' As businesses currently must submit trade data to multiple agencies, in multiple ways, and often on paper, the transition to electronic filing is expected to save businesses time and money. Specifically, this rule removes the requirement that the petition for used ozone-depleting substances accompany the shipment through U.S. Customs and removes references to Customs forms that are obsolete under the new system.

DATES: This rule is effective on May 9, 2016 without further notice, unless EPA receives adverse comment by March 10, 2016. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0309, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW., Washington, DC, 20460; by telephone: (202) 343–9055; or by email: *arling.jeremy@epa.gov.* You may also visit the EPA's Ozone Protection Web site at *www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This rule is intended to make minor changes like the removal of references to U.S. Customs forms that will no longer be available when the electronic International Trade Data System is implemented. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make these edits if adverse comments are received on this direct final rule. We will not institute a

second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

B. Does this action apply to me?

This rule may affect the following categories: Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gas manufacturers, importers, and exporters; Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), including chemical gases and compressed gases merchant importers and exporters; and refrigerant reclaimers or other such entities that might import virgin, recovered, or reclaimed refrigerant gas.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

C. Overview of the International Trade Data System

In 2006, U.S. Customs and Border Protection (CBP) began automating processes for the import and export of goods to improve the control of what enters and leaves the U.S., as well as to improve efficiency. Launched under the Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub. L. 109–347) and the 2007 Import Safety Executive Order 13439, the multi-agency program called the International Trade Data System (the ITDS) assists 48 Federal agencies with import/export responsibilities in their efforts to integrate import and export cargo processing with CBP's Automated Commercial Environment (ACE) for imports, and the Automated Export System (AES) for exports.

On February 19, 2014, the White House issued E.O. 13659 titled ''Streamlining the Export/Import Process for America's Businesses.'' Under E.O. 13659, participating agencies must have all requirements in place and in effect to utilize the ITDS, which includes the ACE and the AES systems for receiving documentation required for the release of imported cargo and the clearance of cargo for export, no later than December 31, 2016.

Under the ITDS, agencies with existing paper-based import and export clearance procedures at the port of exit or entry are working with CBP to enable electronic filing and processing of the import or export shipments based on one set of submitted data that can then be checked against all relevant U.S. agency requirements.

D. Overview of Import Requirements Under the Stratospheric Protection Program

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol, or Protocol) is the international agreement to reduce and eventually eliminate the global production and consumption [1] of ozone-depleting substances (ODS). This goal is accomplished through adherence by each Party to the Protocol to phaseout schedules for specific controlled substances. The Montreal Protocol is implemented in the United States through Title VI of the Clean Air Act. EPA issues allowances for the production and consumption of ODS under sections 604 and 605 of the Clean Air Act. An allowance represents the privilege granted to a company to produce or import one kilogram of the specific substance in a given year. EPA establishes the number of allowances issued to companies through rulemaking. EPA maintains a balance of unexpended allowances through the ODS Tracking System based on production, import, and export data reported to the Agency quarterly.

At the present time, allowances are required for the import of class II controlled substances, all of which are hydrofluorocarbons (HCFCs), and for the import of methyl bromide for critical uses. Allowances are not required, however, for the import of used controlled substances. Used controlled substances are defined as ''substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed)'' (40 CFR 82.3). Imports of used controlled substances are regulated under § 82.13(g)(2) (for imports of used Class I controlled substances) and § 82.24(c)(3) (for imports of used Class II controlled substances). Persons seeking to import used controlled substances are required to submit a petition to the Agency. The petition to import a used controlled substance must contain detailed information such as the previous use of the substance, including the identity of all previous source facilities from which the material was recovered. After review, EPA issues either a ''non-objection notice'' allowing the import to proceed or an ''objection notice'' prohibiting the import.

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported from the United States to other Parties to the Montreal Protocol (*see* section 601(6) of the Clean Air Act).

II. How is EPA integrating ODS import and export requirements with the ITDS?

For purposes of the ITDS, there are three pathways for the import of ozone depleting substances: Imports that require allowances; Imports that require a ''non-objection'' notice issued by EPA; and imports that do not require any documentation to be reviewed by CBP officers. The distinctions between these three categories relate to the type of documentation reviewed by CBP upon entry of the shipment. In all instances the recordkeeping and quarterly and/or annual reporting requirements under 40 CFR part 82, subpart A continue to apply.

A. Imports That Require Allowances

Importers are not required to present documentation of allowances to CBP upon import. Some companies choose to include allowance balance statements provided by EPA with documentation accompanying the import. This is not a requirement of EPA's regulations but is done by the importer to facilitate the entry of the shipment. Under the ITDS, providing a paper copy of an allowance statement will be unnecessary as information being provided for the CBP entry and TSCA certification parts of the filing allow EPA to verify whether the importer has an allowance for the import.

EPA is not changing the reporting and recordkeeping requirements in 40 CFR part 82, subpart A to integrate these ODS imports into the ITDS. Importers are not required to provide a statement of allowances to CBP and this would not change under the ITDS.

B. Imports That Require a Non-Objection Notice

For imports of used controlled substances, current regulations require that the petition and non-objection notice ''accompany the shipment through U.S. Customs.'' EPA is removing the requirement that the petition accompany the shipment through U.S. Customs. EPA does not

believe that the detailed information in a petition to import used ODS is necessary for CBP to make a determination about whether the import should enter the U.S. EPA's decision to allow an import of used ODS is stated in the non-objection notice. Therefore, EPA would still require that the non-objection notice accompany the shipment through Customs.

One component of the ITDS is the Document Image System (DIS) which allows the importer or their broker to file and an agency to view the image of a document, as it appears on paper, without paper needing to physically be provided. Under the ITDS, the non-objection notice would be filed to the DIS. Because this document would be available to CBP, EPA finds that filing a non-objection notice to the DIS meets the requirements in § 82.13(g)(3)(v) and § 82.24(c)(4)(v) that the non-objection notice ''accompany the shipment.'' Therefore, the only change EPA is making to the recordkeeping and reporting requirements in 40 CFR part 82, subpart A to implement the ITDS is to remove the requirement that the petition accompany the shipment.

C. Imports Without CBP Documentation

A third category of ODS imports do not require verification by CBP. These include ODS that fall under the following exemptions: Imports for purposes of transformation or destruction; imports for laboratory and analytical uses; heels or transshipments; and methyl bromide imported under the quarantine and preshipment exemption. EPA is not making any changes to the reporting and recordkeeping requirements in 40 CFR part 82, subpart A to integrate these ODS imports into the ITDS.

D. Other Changes To Conform to the ITDS

EPA is making minor changes to the stratospheric protection regulations at 40 CFR part 82, subpart A, to remove references to U.S. Customs Service forms that will no longer exist when the ITDS is implemented.

Definition of Importer

The definition of importer at 40 CFR 82.3 and 82.104 includes the importer of record ''listed on U.S. Customs Service forms'' for the import. The definition of importer would still include the importer of record but because CBP will no longer be maintaining forms, EPA is removing the clause referencing the Customs Service forms. This change does not affect the scope of who would be considered an importer for the purposes of 40 CFR part 82.

Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements at 40 CFR 82.13(g)(1) and 82.24(c)(2) state that an importer of Class I and Class II controlled substances, respectively, must maintain the U.S. Customs entry form. Under the ITDS, the entry form will no longer exist. EPA uses the Customs entry form to verify that a shipment of ODS has been properly imported into the United States. EPA believes that some type of verifying information is necessary and to the benefit of the importer if the origin of the controlled substance is ever in question. In order for the Agency to identify an individual shipment within the ITDS, EPA is replacing the requirement to keep a record of the Customs form with the requirement to keep a record of the entry number. This will still be generated by the ITDS and will help EPA to identify the specific shipment within the ITDS.

Similarly, the recordkeeping and reporting requirements at 40 CFR 82.13(g)(3)(viii) and 82.24(c)(4)(viii) state that an importer of used Class I and Class II controlled substances, respectively, must maintain the U.S. Customs entry documents for the import. For the reasons discussed above, EPA is removing the recordkeeping requirements for the U.S. Customs entry documents but is substituting the requirement to maintain the entry number for the shipment of used ODS.

In addition, reporting requirements for exporters of class II substances under § 82.24(d)(2) (related to export production allowances) or § 82.24(d)(3) (related to Article 5 allowances) reference the Shipper's Export Declaration Form and U.S. Customs Form 7525 as locations for the Employer Identification Number (EIN) of the shipper or their agent. EPA is removing references to these two forms but is maintaining the requirement that the EIN be provided.

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA because the requirements to maintain entry numbers and EINs are a subset of the previous requirements to maintain forms containing this information. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0170 and 2060–0438.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose any enforceable duties on communities of Indian tribal governments. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or the environment. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Imports, Ozone, Reporting and recordkeeping requirements.

Dated: January 21, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. In § 82.3, revise the definition for ''Importer'' to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Importer means any person who imports a controlled substance or a controlled product into the United States. ''Importer'' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee;

(2) The importer of record;

(3) The actual owner; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

* * * * *

■ 3. In § 82.13, revise paragraphs (g)(1)(xii), (g)(3)(v), and (g)(3)(viii)(D) to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(g) * * *

(1) * * *

(xii) The U.S. Customs entry number;

* * * * *

(3) * * *

(v) To pass the approved used class I controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

* * * * *

(viii) * * *

(D) The U.S. Customs entry number.

* * * * *

■ 4. In § 82.24, revise paragraphs (c)(2)(xiii), (c)(4)(v), (c)(4)(viii)(D), (d)(2)(i), and (d)(3)(i) to read as follows:

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

* * * * *

(c) * * *

(2) * * *

(xiii) The U.S. Customs entry number;

* * * * *

(4) * * *

(v) To pass the approved used class II controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

* * * * *

(viii) * * *

(D) The U.S. Customs entry number.

* * * * *

(d) * * *

(2) * * *

(i) The Employer Identification Number of the shipper or their agent;

* * * * *

(3) * * *

(i) The Employer Identification Number of the shipper or their agent; and

* * * * *

■ 5. In § 82.104, revise paragraph (m)(2) to read as follows:

§ 82.104 Definitions.

* * * * *

(m) * * *

(2) The importer of record;

* * * * *

[FR Doc. 2016–02321 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9936–89–Region 8]

National Oil and Hazardous Substance Pollution Contingency Plan: Partial Deletion of the California Gulch Superfund Site; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 8 is publishing a direct final Notice of Partial Deletion of Operable Unit 1 (OU1) Yak Tunnel/Water Treatment Plant; and Operable Unit 3 (OU3), Denver & Rio Grande Western Railroad Company (D&RGW) Slag Piles/Railroad Easement/Railroad Yard, of the California Gulch Superfund Site (Site), located in Lake County, Colorado, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and

Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Colorado (State), through the Colorado Department of Public Health and Environment (CDPHE) because EPA has determined that all appropriate response actions at OU1 and OU3 under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

DATES: This direct final partial deletion is effective April 11, 2016 unless EPA receives adverse comments by March 10, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *Email: Linda Kiefer, kiefer.linda@epa.gov.*
- *Fax:* (303) 312–7151.
- *Mail:* Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129.
- *Hand delivery:* Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information by calling EPA Region 8 at (303) 312–7279.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov;* by calling EPA Region 8 at (303) 312–7279 and leaving a message; and at the Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486–0569, Monday and Wednesday from 10:00 a.m.–8:00 p.m., Tuesday and Thursday from 10:00 a.m.–5:00 p.m., and Friday and Saturday 1:00 p.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Linda Kiefer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6689, email: *kiefer.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region 8 is publishing this direct final Notice of Partial Deletion for all of Operable Unit 1 (OU1), Yak Tunnel/Water Treatment Plant; and Operable Unit 3 (OU3), Denver & Rio Grande Western Railroad Company (D&RGW) Slag Piles/Railroad Easement/Railroad Yard, from the NPL. The NPL constitutes Appendix B of the NCP, 40 CFR part 300, which EPA promulgated pursuant to Section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the NPL. 60 FR 55466 (November 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses OU1, Yak Tunnel/Water Treatment Plant; and OU3, D&RGW Slag Piles/Railroad Easement/Railroad Yard, and demonstrates how they meet the deletion criteria. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

This partial deletion pertains to all of OU1 and OU3. Operable Unit 2 (OU2), Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing; Operable Unit 4 (OU4) Upper California Gulch; Operable Unit 5 (OU5), ASARCO Smelters/Slag/Mill Sites; Operable Unit 7 (OU7), Apache Tailing Impoundment; Operable Unit 8 (OU8), Lower California Gulch; Operable Unit 9 (OU9), Residential Populated Areas; and Operable Unit 10 (OU10), Oregon Gulch, were deleted from the NPL in previous partial deletion actions. Operable Unit 6 (OU6), Starr Ditch/Stray Horse Gulch/Lower Evans Gulch/Penrose Mine Waste Pile; Operable Unit 11 (OU11), Arkansas River Floodplain; and Operable Unit 12 (OU12), Site-wide Surface and Groundwater Quality, are not being considered for deletion as part of this action and will remain on the NPL.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the deletion of OU1 and OU3:

(1) EPA has consulted with the State prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the CDPHE, has concurred on the partial deletion of OU1 and OU3 of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the Leadville Herald Democrat. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of OU1 and OU3 of the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting OU1 and OU3 of the Site from the NPL.

Site Background and History

The California Gulch Superfund Site, EPA ID No. COD980717938, CERCLIS Site ID 0801478, is located in Lake County, Colorado approximately 100 miles southwest of Denver. The Site was proposed for inclusion on the NPL on December 30, 1982, (47 FR 58476), and listed on September 8, 1983, (48 FR 40658). The Site is in a highly mineralized area of the Colorado Rocky Mountains covering approximately 18 square miles of a watershed that drains along California Gulch to the Arkansas River. The Site includes the City of Leadville, various parts of the Leadville Historic Mining District, Stringtown, and a section of the Arkansas River from the confluence of California Gulch to the confluence of Two-Bit Gulch. Mining, mineral processing, and smelting activities have occurred at the Site for more than 130 years. Mining in the district began in 1860, when placer gold was discovered in California Gulch. As the placer deposits were exhausted, underground mine workings became the principal method for removing gold, silver, lead and zinc ore. As these mines were developed, waste rock was excavated along with the ore and placed near the mine entrances. Ore was crushed and separated into metallic concentrates at mills, with mill tailing generally released into surrounding streams and after about 1930 slurried into tailing impoundments. Many of the mining operations ceased operations around 1900, although several smelters continued operations into the 1920s (Western Zinc) and the 1960s (AV Smelter) and the last active mine, the Black Cloud, shut down in 1999.

All of the mines within the Site boundaries are presently inactive, and all of the mills and smelters have been demolished. Mining remains that contributed to environmental contamination are (1) mill tailing (the fine-grained residue remaining after milling has removed the metal concentrates form the ore) in impoundments and fluvial deposits; (2) mine waste rock piles (mine development rock and low grade ore removed to gain access to an ore body, and often deposited near adits and shaft openings); (3) mine water drainage tunnels; (4) draining adits; and (5) various smelter wastes including slag piles, flue dust and fallout from stack emissions.

The Site was placed on the NPL due to concerns regarding the impact of acidic and metals laden mine drainage on surface waters leading to California Gulch and the impact of heavy metals loading into the Arkansas River. A Site-wide Phase I Remedial Investigation (Phase I RI), which primarily addressed surface water and groundwater contamination, was issued in January 1987. As a result of the Phase I RI, EPA identified the first operable unit, the Yak Tunnel, to address the largest single source of metallic loading. A number of additional Site-wide studies followed the Phase I RI.

EPA agreed, pursuant to a May 2, 1994 Consent Decree (1994 CD), to divide the Site into 12 operable units (OUs). The OUs are as follows: OU1, Yak Tunnel/Water Treatment Plant; OU2, Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing; OU3, D&RGW Slag Piles/Railroad Easement/Railroad Yard; OU4, Upper California Gulch; OU5, ASARCO Smelter Sites/Slag/Mill Sites; OU6, Starr Ditch/Stray Horse Gulch/Lower Evans Gulch/Penrose Mine Waste Pile; OU7, Apache Tailing Impoundments; OU8, Lower California Gulch; OU9, Residential Populated Areas; OU10, Oregon Gulch; OU11, Arkansas River Valley Floodplain; and OU12, Site-wide Surface and Groundwater. With the exception of OU12, the OUs pertain to distinct geographical areas corresponding to areas of responsibility for the identified responsible parties and/or to distinct sources of contamination. To date, OU2, OU4, OU5, OU7, OU8, OU9, and OU10 have been partially deleted from the NPL.

The background and history, the Remedial Investigations and Feasibility Studies (RI/FS), Removal and Response Actions, Selected Remedies, Cleanup

Standards, and Operation and Maintenance activities for OU1 and OU3 are discussed below.

OU1 Background and History

Operable Unit 1 (OU1) consists of the Yak Tunnel and Water Treatment Plant. The Yak Tunnel and Yak Tunnel Water Treatment Plant are located to the southeast of the City of Leadville. A map of OU1 can be found in the docket at *www.regulations.gov* under Docket ID no. EPA–HQ–SFUND–1983–0002. The Yak Tunnel was constructed to dewater mines and to facilitate mineral exploration and development. The tunnel was driven in 1895, as an extension of the Silver Cord Tunnel, to drain the Iron Hill mines. The Yak Tunnel was extended several times, with the last extension occurring in 1923. The Yak Tunnel extends underground approximately 3½ to 4 miles into Iron Hill and Breece Hill. The tunnel has several major laterals and drifts that extend from the tunnel into various mine workings, such as the Horseshoe, the Rubie, the North Mike, the South Mike, the Ibex No. 4, the Little Winnie, the Resurrection No. 1, the Fortune, the Resurrection No. 2, and the Dolly B. The EPA estimated that 60,000 feet of tunnels and major laterals and 55 to 74 million cubic feet of void space are associated with the tunnel mining activities. At the time of the ROD in March 1988, studies indicated that a combined total of 210 tons per year of cadmium, lead, copper, manganese, iron, and zinc were discharged from the Yak Tunnel into California Gulch, which drains into the Arkansas River. Surface water contamination is the major impact of the Yak Tunnel discharge. Shallow alluvial ground water and stream sediment may have been impacted by historic releases from the Yak Tunnel.

OU1 Remedial Investigations and Feasibility Study (RI/FS)

The State, the EPA and certain Potentially Responsible Parties (PRPs) conducted various studies and investigations to evaluate the nature and extent of contamination generally at the Site. Remedial Investigations (RIs) began in 1986 within the Site, including mine waste rock piles, tailing disposal areas, surface water and aquatics, groundwater, smelter sites, residential/populated area soils, slag piles, and terrestrial studies. The Yak Tunnel/California Gulch Remedial Investigation (1986 RI) evaluated the human health and environmental impacts due to historic mining activities.

In May 1987, the Phase I Remedial Investigation (1987 Phase I RI) confirmed that the Yak Tunnel is a significant source of metals contamination. Results of this study indicated that 75 to 80 percent of the cadmium, manganese, and zinc detected at the confluence of California Gulch with the Arkansas River originates from the Yak Tunnel. Historical information along with data collected during the 1987 Phase I RI indicated that the Yak Tunnel discharge had a significant detrimental impact on the aquatic environment at the site. In addition, the Yak Tunnel discharge presented a potential public health risk based on exposure to affected surface and groundwater at the California Gulch Site.

The EPA released the Yak Tunnel Feasibility Study (FS) in June 1987 and a proposed plan for the Yak Tunnel in August 1987.

OU1 Selected Remedy

The EPA issued the Record of Decision (ROD) for OU1 (1988 OU1 ROD) on March 29, 1988. The remedy chosen in the 1988 OU1 ROD was modified in an Amended ROD (AROD) signed on March 23, 1989 (1989 OU1 AROD) and, further, modified in an ESD signed on October 22, 1991 (1991 OU1 ESD) and an ESD signed on July 29, 2013 (2013 OU1 ESD).

The selected remedy in the 1988 OU1 ROD was narrowly focused on the discharges from the Yak Tunnel as a major source of contamination to California Gulch and the Arkansas River. Broader issues of water quality generally in California Gulch and the Arkansas River were addressed as part of remedial actions taken at other operable units. Thus, the 1988 OU1 ROD identified a single remedial action objective (RAO) of decreasing the release and threatened release of hazardous substances, pollutants and contaminants from the Yak Tunnel into California Gulch.

The original remedy selected in the 1988 OU1 ROD consisted of the following remedial components: (1) Construction of surge ponds to capture drainage from the tunnel and to minimize the impact of surges on California Gulch and the Arkansas River; (2) Installation of an interim water treatment system to treat water from the Yak Tunnel before discharge in California Gulch; (3) Sealing of shafts, drill holes and fractured rock and diversion of surface water from tunnel recharge areas to reduce the amount of water entering the Yak Tunnel system; (4) Grouting of fractured rock, caved-in areas and drill holes to prevent seepage of contaminated water to the land surface; (5) Installation of a pumping system to control water levels behind the portal plug. The pumped water would be routed to the interim treatment system; (6) Construction of a minimum of three concrete plugs in the Yak Tunnel to seal off the major flow route for groundwater movement; (7) Establishment of a surface and groundwater monitoring system to detect leakage, seeps or migration of contaminated groundwater, which may result from installation of the tunnel plugs; (8) Development and implementation, as necessary, of a contingency plan to address any adverse effects on surface or groundwater from tunnel plugging; and (9) Operations and maintenance of the remedy.

The 1989 OU1 AROD made the following changes in the remedy: (1) Installation of a permanent water treatment system to treat contaminated groundwater from the Yak Tunnel before discharge in California Gulch, as opposed to the interim treatment facility originally proposed; (2) Construction of a surge pond or ponds to capture drainage from the tunnel and to minimize surges on California Gulch. The original remedy called for multiple surge ponds and did not consider the use of a single pond; (3) Reduction of seepage and recharge was made optional. Grouting of fractured rock, cave-ins and drill holes was removed as part of the remedy; and (4) The portal plug was modified to be a flow-through plug as opposed to a solid plug.

The 1991 OU1 ESD made the following changes in the remedy: (1) Construction of a single surge pond as a permanent part of the remedy; (2) Construction of a flow-control bulkhead within the tunnel to prevent surges. Two of three originally planned plugs were removed from the remedy; (3) Identification of groundwater flow direction and potential gradient reversal as additional element of the monitoring plan. The monitoring system was proposed to include a minimum of seven groundwater monitoring wells as opposed to a minimum of 23 wells proposed in the 1989 AROD; (4) Placement of six or more weirs, or other flow measuring devices, at key locations in the Yak Tunnel. The weir locations were selected during an initial inspection of the tunnel; (5) Periodic inspection of the Yak Tunnel. Qualified mining crews will enter the tunnel annually to inspect and maintain weirs and other structures in the tunnel. Crews will also enter the tunnel to determine the cause of unexpected increases or decreased in flow within the Yak Tunnel; and (5) Development and implementation, as necessary, of a contingency plan to address any adverse

effects on surface or groundwater resulting from tunnel blockage. The implementation would be based upon decrease in flow from Yak Tunnel, rise in water levels in monitoring wells located near mine workings, indication of gradient reversal, or degradation of water quality.

Because the selected remedy in the 1988 OU1 ROD left wastes in place but did not include institutional controls (ICs), a second ESD was signed on July 29, 2013 to include ICs. The objectives of ICs for OU1 are as follows: (1) Reduce or control human exposure to contaminants of concern; and (2) Maintain the integrity of and prevent disturbances to engineered features or structures established as part of the current remedy or future remedies. The properties that comprise most of OU1 are owned by Resurrection/Newmont.

OU1 Cleanup Standards

The OU1 remedy was the first source control remedy at the Site that addressed the Yak Tunnel discharge as the largest single source of contamination to surface water and groundwater but did not contain numeric cleanup standards for those media. Numeric cleanup standards for site-wide surface water and groundwater contamination were established in the OU12 Record of Decision.

OU1 Response Actions

The EPA issued a Unilateral Administrative Order (UAO) to ASARCO Incorporated, Newmont Mining Corporation, Res-ASARCO Joint Venture and Resurrection Mining Company on March 29, 1989 ordering these parties to perform the remedial design and remedial action for the Yak Tunnel. Two amendments were made to the UAO on April 30, 1993 and June 16, 1993. The UAO was replaced and terminated in a 2008 Consent Decree settlement (2008 CD) by and among the United States, State of Colorado, Newmont USA Limited and Resurrection Mining Company. Under the 2008 CD, Newmont USA Limited and Resurrection Mining Company assumed responsibility for the OU1 remedy. Construction of a surge pond and permanent water treatment plant began in September 1988 and was completed in June 1991. The construction efforts included four main elements: (1) A surface water conveyance system, (2) the surge pond itself, (3) a barge transfer system and (4) installation of gravity filters. The water treatment facility to treat waters emanating from the Yak Tunnel was constructed over a two-year period and the Yak Tunnel Water Treatment Plant has been in operation since construction was completed in February 1992. The Yak Tunnel Bulkhead was constructed in 1994 to control surges of water coming from the Yak Tunnel, particularly during spring melt. The bulkhead is located approximately 1,680 feet into the tunnel from the portal. Additional efforts were made in 1995 and 1996 to reduce metals loading into the Arkansas River from ephemeral tributaries. As part of a Consent Decree settlement with Resurrection/Newmont, Resurrection/Newmont placed environmental covenants on its properties in OU1 on July 31, 2012 and October 1, 2012 that meets the IC objectives above. All remedial components described in the 1988 OU1 ROD and subsequent 1989 OU1 AROD, 1991 OU1 ESD, and the 2013 OU1 ESD have been implemented.

OU1 Operation and Maintenance

The potentially responsible parties' (PRPs) operations and maintenance (O&M) responsibilities were first defined under the UAO and then updated in the 2008 CD. In accordance with the terms of the 2008 CD, the Routine Monitoring Plan (RMP), Contingency Plan (CP) and the OU1 Work Plan (Work Plan) govern the long-term implementation of the selected remedy for the OU1. The OU1 Work Plan, CP and the RMP are appendices to the 2008 CD.

Routine O&M includes repairing grouted areas of structures due to corrosion, settlement or other factors; occasional repair or replacement of monitor well pumps and surface water monitoring equipment; repair of access roads; routine repair or replacement of pumps, motors, mixers, piping and tankage; and inspections. The treatment plant operates under requirements established in the OU1 Work Plan, and submits monthly and annual reports to EPA. Resurrection/Newmont summarizes monitoring data and data evaluation required by the OU1 Routine Monitoring Plan in the Annual Monitoring Reports, Yak Tunnel System for the Yak Tunnel Operable Unit, Leadville, CO. Current reports and associated data are available by contacting EPA Region 8.

In regards to ICs, environmental covenants for Resurrection/Newmont's properties within OU1 were recorded with the Lake County Clerk and Recorder on July 31, 2012 and October 10, 2012. The environmental covenants provide the following Use Restrictions: (1) No Residential Use, Day Care Centers or Schools, Parks or Open Space that are designed or intended to provide play or recreation areas for children, (2) Restrictions on using untreated groundwater from wells, and (3) Restrictions on uses or activities that would disturb/interfere or have the potential to disturb/interfere with the protectiveness of the remedy and remedial components. All of OU1 is zoned Industrial Mining by Lake County, which serves to limit future changes of land use without County approval and Lake County has established a protocol to notify the EPA and the CDPHE of any proposed changes.

OU3 Background and History

D&RGW Slag Piles/Railroad Easement/Railroad Yard (OU3) included three slag piles (Arkansas Valley (AV), La Plata, and Harrison Street), approximately 12 acres at Harrison Avenue and Monroe Street which contained the Harrison Street slag pile, an easement that runs diagonally through the City of Leadville, and a portion of the rail yard known as Poverty Flats. The Denver & Rio Grande Western Railroad Company (D&RGW) owned theses slag piles, property, easement and rail yard when OU3 was designated in 1994. A map of OU3 can be found in the docket at *www.regulations.gov* under Docket ID no. EPA–HQ–SFUND–1983–0002.

In 1961, D&RGW purchased the AV Slag Pile from ASARCO Incorporated for use as railroad ballast. D&RGW purchased the La Plata Slag Pile from the Leadville Sanitation District in 1970. Additionally, D&RGW purchased the Harrison Street Slag Pile and Harrison Avenue property from NL Industries in 1983.

The AV Slag Pile covers approximately 40 acres just west of Stringtown. The pile generally consists of slag produced by the AV smelter that operated from 1882 to 1960. Based on aerial photography, the pile volume in the late 1950s was approximately 1.2 million cubic yards, whereas in 1998 approximately 422,000 cubic yards of slag remained, of which, approximately 190,000 cubic yards is stockpiled fine slag.

The La Plata Slag Pile, located west of the City limits of Leadville on Elm Street, has a volume estimated at 105,000 cubic yards. Bimetallic Smelting Company leased the La Plata Smelter Works in OU3 from 1892 to 1900 for pyritic smelting of low-grade ores.

The Harrison Reduction Works was located near the northeast corner of Harrison Avenue and Elm Street, in a residential area. The Harrison Street Slag Pile ranged from 20 to 50 feet in

height and covered an area of approximately 3 acres. The Harrison Street Slag Pile was removed to original grade and relocated to the AV Slag Pile in March 1998.

Once a hotbed of transportation activities mostly related to mining, the Poverty Flats rail yard, located between 12th Street, Highway 24, 17th Street and County Road 8, is now vacant. The portion of the Poverty Flats rail yard formerly owned by D&RGW is located near the north end of the City of Leadville, encompasses an area of roughly 43 acres, and is crossed by abandoned rail lines and access roads. Slag, which was used in the rail yard as ballast and as a road base to provide support for heavy vehicle traffic, was also deposited around the loading dock due to spillage during transportation activities.

The rail easement includes the portion of railroad track that runs diagonally through Leadville and consists of approximately 25 feet on either side of the track centerline. Slag was used as a road base to provide support for heavy vehicle traffic. Slag was also deposited as spillage from passing rail cars.

D&RGW identified a small volume of fine slag in the Poverty Flats rail yard. D&RGW prepared a plan, which addressed removal of the fine slag from this area to the AV Smelter Slag Pile. As a result of the Union Pacific Railroad Company (UPRR) purchase of the Southern Pacific Transportation Company (surviving corporation from an earlier merger of D&RGW and Southern Pacific Railroad), UPRR took ownership of all D&RGW property at the Site in 1996 and assumed D&RGW's responsibilities under the 1993 D&RGW CD.

During the summer and fall of 1997, UPRR removed 1,264 cubic yards of slag, including fine slag, from the rail yard and placed it onto the AV Slag Pile. As a result, soils were exposed containing elevated concentrations of lead. Soils samples, taken before and after removal of the slag, showed levels of lead in soil that exceed the Site-wide residential action level of 3500 mg/kg lead, thus lead in the soils on this property may create the potential for unacceptable human health risks should the property be developed for residential use. This vacant property is zoned Business by Lake County. However, institutional controls are in place to protect human health in the event of future residential development.

As part of their ballast operations, UPRR relocated approximately 104,000 cubic yards of slag to the AV Slag Pile in March 1998, which brought the Harrison Street Slag Pile to grade. Soils samples taken after removal of the slag showed levels of lead in soils, both under where the slag pile was located and otherwise on the Harrison Avenue property, that exceed the residential action level for lead in soils of 3500 mg/kg. Thus, the lead in the soils on the Harrison Avenue property may create the potential for unacceptable human health risks should the property be developed for residential use. To date, the land remains vacant. Sections along the highway are zoned Commercial, and the remaining sections are zoned Transitional Commercial by the City of Leadville. However, institutional controls are in place to protect human health in the event of future residential development.

In July 1998, UPRR submitted a Work Plan for the Consolidation of Fine Slag at the Railroad Easement Near McWethy Drive to 12th Street, Leadville, Colorado. The work plan provided for the easement to be converted into a segment of the Mineral Belt Trail. Consistent with the plan, fine slag from the rail easement was used as base material on the Mineral Belt Trail. More specifically, the fine slag was consolidated and covered with a compacted gravel sub-base of six inches and then two one-inch layers of asphalt to encapsulate it. This resource utilization was consistent with the contingency under the 1998 OU3 ROD. The completion of the consolidation work was approved in September 1998. The conversion of the railroad easement to the Mineral Belt Trail was completed with the installation of a sub-base, culverts, asphalt, signs, centerline striping, and re-vegetation. In accordance with a 1998 Memorandum of Understanding between EPA, UPRR, and Lake County, Lake County completed these projects, and UPRR provided funding for the sub-base, culverts, and asphalt in 2000. Ownership of the easement has been transferred to Lake County via quitclaim deed.

OU3 Remedial Investigations and Feasibility Study (RI/FS)

The State, the EPA and certain Potentially Responsible Parties (PRPs) have conducted various studies and investigations to evaluate the nature and extent of contamination generally at the Site, and specifically within OU3. Remedial Investigations (RIs) began in 1986 within the Site, including mine waste rock piles, tailing disposal areas, surface water and aquatics, groundwater, smelter sites, residential/populated area soils, slag piles, and terrestrial studies.

Concurrent with the various investigations and studies, risk assessments were conducted at the California Gulch Superfund Site. Some included the Preliminary Baseline Risk Assessment (Preliminary BRA), and the Final Baseline Human Health Risk Assessments (Final BRA): Part A, Part B, and Part C. For human health risk issues at OU3, the Preliminary BRA and the Final BRA Part C, Evaluation of Worker Scenario and Evaluation of Recreational Scenarios, were most pertinent. The Preliminary BRA indicated that lead and arsenic are responsible for the majority of human health risks at the Site. Therefore, arsenic and lead were used as indicator contaminants for risk in the Final BRA.

EPA and D&RGW entered into an Administrative Order on Consent (1991 D&RGW AOC) on December 3, 1991. The 1991 D&RGW AOC required D&RGW to perform remedial investigations of major lead slag piles and one zinc slag pile within the Site. In 1992, D&RGW completed a remedial investigation (1992 OU3 Slag RI) of the major lead slag piles and the zinc slag pile within the Site. Slag was found to have elevated levels of zinc, lead, arsenic and cadmium along with a low acid-generating potential, and a neutral to basic pH. Fine slag, which is less than ⅜ of an inch, was found to have elevated lead levels. The fine fraction of slag was the only part of the slag that may present an unacceptable risk because fine slag poses an inhalation hazard.

EPA and D&RGW entered into a Consent Decree on September 15, 1993 (1993 D&RGW CD) for the completion of investigation, feasibility studies, and remediation activities to be performed for OU3. The 1993 D&RGW CD stated EPA's concerns regarding the fine fraction of the stockpiled slag at the AV Smelter site and the potential for particulate release during ballast operations as a potential human health exposure pathway. The 1993 D&RGW CD required D&RGW to perform a feasibility study for stockpiled fine slag and to submit an operations plan before initiating any ballast operations.

In 1993, the EPA conducted a Screening Feasibility Study (1993 SFS) to initiate the overall CERCLA FS process at the California Gulch Site. The purpose of the SFS was to develop general response actions and identify an appropriate range of alternatives applicable to the various contaminant sources to be considered during feasibility studies for the California Gulch Site. The 1993 SFS for Remedial Alternatives examined several remediation alternatives for slag located

at the Site based on specific criteria, such as relative cost, implementability, and effectiveness. The three remedial alternatives for slag retained for further evaluation were: No action, institutional controls, and resource utilization. The La Plata and Harrison Street Slag piles did not contain fine slag. Therefore, no further action was necessary. Because the AV Smelter pile contained fine slag, more investigation was required.

In July of 1995, D&RGW submitted a ballast operations plan to EPA. Following EPA's approval of the plan, ballast operations commenced in August 1995 but ceased soon thereafter for lack of a profitable market for the slag. Ballast operations involve the sorting of larger slag so that the size fraction of greater than ⅜ inch and less than 2½ inches is produced for road ballast. The undersized fraction (i.e., less than ⅜ inch), or sorted fine slag, that is produced by the sorting process is stockpiled along with the previously sorted fine slag at the Arkansas Valley pile.

D&RGW's 1996 Final Stockpiled Fine Slag Feasibility Study (1996 OU3 FS) focused on the AV Smelter Slag Pile's existing fine slag subpile and fine slag potentially generated from future ballast production. Based upon the 1993 SFS and 1993 D&RGW CD, the remedial action objective for the stockpiled fine slag was to: prevent leaching of metals of concern in concentrations that would have an adverse impact on soils, surface or ground water near the slag piles. The 1996 OU3 FS provided a detailed analysis of the three retained remediation alternatives (no action, institutional controls, and resource utilization) from the 1993 SFS as applied to the stockpiled fine slag. The result of the 1996 OU3 FS for the stockpiled fine slag was a Proposed Plan with a No Action Alternative for the stockpiled fine slag subpile of the AV Smelter Slag Pile. In September 1996, the Proposed Plan was issued with a preferred alternative of ''No Action,'' with a contingency for future utilization of the slag.

OU3 Selected Remedy

The EPA issued the Stockpiled Fine Slag—Arkansas Valley Smelter Slag Pile ROD for OU3 on May 6, 1998 (1998 OU3 ROD). Based on consideration of CERCLA requirements, detailed analyses of alternatives, and public comments, the EPA determined that a No Action alternative was the appropriate remedy. The No Action alternative leaves the stockpiled fine slag in its existing condition with no control or cleanup planned. The No Action alternative includes a provision, denoted as a contingency, for future utilization of the slag, if it is encapsulated prior to its use or reuse. The 1998 OU3 ROD also provides a provision to use the slag in the future if regional market demand exists for the material as a component in construction materials.

The 1998 OU3 ROD did not require maintenance of the fine slag piles. Any future use of the slag would require encapsulation prior to reuse. Encapsulation can include the use of fine slag in concrete or asphalt aggregate, as a road base, or as backfill (so long as the slag is chemically bound or physically separated from an exposure by a barrier consisting of a different material).

Sampling in the Poverty Flats rail yard property and the Harrison Avenue property shows levels of lead in soils above levels that would allow for unlimited use and unrestricted exposure, *i.e.,* above the residential action level established for OU9, Residential Populated Areas of the Site. In addition, the Mineral Belt Trail, which was constructed on the former railroad easement, acts as a cap for fine slag and residual slag remains in other parts of OU3. Thus, the August 6, 2014 ESD (2014 OU3 ESD) addresses the need for ICs, and documents the decision to require ICs for OU3. In addition, the use of the term ''contingency'' for fine slag utilization in the 1998 OU3 ROD is clarified in the 2014 OU3 ESD. Fine slag can be used for future commercial purposes by following the requirements set out in the 1998 OU3 ROD.

OU3 Cleanup Standards

As the final determination in the 1998 OU3 ROD was No Action ROD, no cleanup standards were identified for fine slag in the record of decision. The OU12 remedy addresses site-wide surface water and groundwater contamination.

OU3 Response Actions

No response actions were taken pursuant to the No Action ROD. The ICs established by the City and County ordinances were response actions that were incorporated into the OU3 remedy by the ESD. Lake County, on March 3, 2009, and the City of Leadville, on May 7, 2013, implemented ICs in the form of local ordinances, amending the Land Development Codes and adopting regulations that protect both engineered and non-engineered remedies at OU3. A best management practice handout is provided to all applicants applying for a building permit within OU3. In addition, any disruptions of engineered or non-engineered remedies, and/or excavation of more than 10 cubic yards of soil off-site within OU3 require written approval from the CDPHE.

OU3 Operation and Maintenance

Because the 1998 OU3 ROD was a No Action ROD, no maintenance was required.

Five-Year Review

The remedies at the entire Site, including OU1 and OU3 require ongoing five-year reviews in accordance with CERCLA Section 121(c) and Section 300.430(f)(4)(ii) of the NCP. The next five-year review for the California Gulch Site is planned for 2017.

In the 2012 five-year review dated September 27, 2012 for the Site, the OU1 remedy was determined to be protective in the short-term. There were concerns regarding continued long-term protectiveness because the requirement of ICs was not documented in a decision document even though ICs had already been implemented by the PRP and Lake County. Environmental covenants for Resurrection/Newmont's properties within OU1 were recorded with the Lake County Clerk and Recorder on July 31, 2012 and October 10, 2012. An ESD dated July 29, 2013 (2013 OU1 ESD) resolved this concern.

In the 2012 five-year review for the Site, the OU3 remedies were determined to be protective in the short-term. The five-year review, recommended a review to determine whether additional response actions were needed at OU3 to insure long-term protectiveness. The review determined that ICs were needed to insure long-term protectiveness. The 2013 OU3 ESD addresses the need for ICs because some soils and residual slag remained above the residential action level, and documents the decision to require ICs. Ordinances adopted by the City and County met the IC objectives set out in the ESD

Pursuant to CERCLA section 121(c) and the NCP, EPA will conduct the next five-year review by September 27, 2017 to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k) and CERCLA Section 117, 42 U.S.C. 9617. During the development and implementation of the remedies for these operable units, comment periods were offered for proposed plans, five-year reviews, and other public meetings.

The documents that the EPA relied on for the partial deletion of OU1 and OU3 from the California Gulch Superfund Site are in the docket and are available to the public in the information repositories. A notice of availability of the Notice of Intent for Partial Deletion has been published in the Leadville Herald Democrat to satisfy public participation procedures required by 40 CFR 300.425 (e) (4).

The State, the Lake County Commissioners, the City of Leadville are supportive of the partial deletion of OU1 and OU3. The State signed a letter of concurrence on October 7, 2015.

Determination That the Criteria for Deletion Have Been Met

EPA has consulted with the State, Lake County Commissioners, and the City of Leadville on the proposed partial deletion of OU1 and OU3 of the California Gulch Site from the NPL prior to developing this Notice of Partial Deletion. Through the five-year reviews, EPA has also determined that the response actions taken are protective of public health or the environment and, therefore, taking of additional remedial measures is not appropriate.

The implemented remedies achieve the degree of cleanup or protection specified in: for OU1, the 1988 OU1 ROD, 1989 OU1 AROD, the 1991 OU1 ESD and 2013 OU1 ESD; and for OU3, the 1998 OU3 ROD and the 2014 OU3 ESD.

All selected removal and remedial action objectives and associated cleanup goals for OU1 and OU3 are consistent with agency policy and guidance. This partial deletion meets the completion requirements as specified in OSWER Directive 9320.2–22, Close Out Procedures for National Priority List Sites. All response activities at OU1 and OU3 of the Site are complete and the two operable units pose no unacceptable risk to human health or the environment. Therefore, EPA and CDPHE have determined that no further response is necessary at OU1 and OU3 of the Site.

V. Partial Deletion Action

The EPA, with concurrence of the State through the CDPHE has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. Therefore, EPA is deleting all of OU1, Yak Tunnel/Water Treatment Plant; and OU3, D&RGW Slag Easement/Railroad Yard, of the Site.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective *April 11, 2016* unless EPA receives adverse comments by *March 10, 2016.* If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 15, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 223

[Docket No. FRA–2012–0103, Notice No. 2]

RIN 2130–AC43

Safety Glazing Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, FRA is revising and clarifying existing regulations related to the use of glazing materials in the windows of locomotives, passenger cars, and cabooses. This final rule reduces paperwork and other economic burdens on the rail industry by removing a stenciling requirement for locomotives, passenger cars, and cabooses that are required to be equipped with glazing. This final rule also clarifies the application of the regulations to older equipment and to the end locations of all equipment to provide more certainty to the rail industry and more narrowly address FRA's safety concerns. In addition, this final rule clarifies the definition of passenger car, updates the rule by removing certain compliance dates that are no longer necessary, and, in response to comments on the proposed rule, modifies the application of the regulations to passenger cars and cabooses in a railroad's fleet that are used only for private transportation purposes and to older locomotives used in incidental freight service.

DATES: This final rule is effective April 11, 2016. Petitions for reconsideration must be received on or before April 11, 2016. Comments in response to petitions for reconsideration must be received on or before May 24, 2016.

ADDRESSES: *Petitions for reconsideration and comments on petitions for reconsideration:* Petitions for reconsideration or comments on petitions for reconsideration related to Docket No. FRA–2012–0103, Notice No. 2, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the Web site's online instructions for submitting comments, to include petitions for reconsideration.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC43). Note that all petitions and comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments, petitions, or materials.

Docket: For access to the docket to read background documents, any petition for reconsideration submitted, or comments received, go to *http://www.regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Zuiderveen, Railroad Safety Specialist, Motive Power & Equipment Division, Office of Safety Assurance and Compliance, Mail Stop 25, Federal

Railroad Administration, 1200 New Jersey Avenue SE., Room W35–216, Washington, DC 20590 (telephone 202–493–6337); or Michael Masci, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W31–115, Washington, DC 20590 (telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Beginning on January 18, 2011, the President issued a set of Executive Orders which require Federal agencies to review existing regulations and reduce the regulatory burden on industry, when appropriate. (*See* Executive Orders 13563 and 13610, discussed in more detail in section II of this preamble). During FRA's review of its Safety Glazing Standards in 49 CFR part 223 [1] (part 223), FRA identified potential changes to requirements for stenciling and ''antiquated equipment'' as opportunities to reduce paperwork and other economic burdens on the rail industry without adversely impacting safety. On September 26, 2014, FRA issued its proposed changes to these requirements in a notice of proposed rulemaking (NPRM). *See* 79 FR 57856. After considering the comments received on the NPRM, FRA modifies these requirements in this final rule.

Specifically, this final rule eliminates as unnecessary the requirement to stencil inside walls of locomotive cabs, passenger cars, and cabooses to indicate that the equipment contains window glazing certified in compliance with the Safety Glazing Standards. Further, this final rule uses a rolling, 50-year calculation to determine whether equipment is ''antiquated'' based on its build date—rather than a fixed date of 1945 or earlier—thereby eliminating the cost of fitting equipment more than 50 years old and used only for certain purposes with compliant glazing. To maintain safety in connection with the change to the application of the term ''antiquated equipment,'' FRA is clarifying requirements for emergency windows in occupied passenger cars operated in intercity passenger or commuter trains, and clarifying requirements for locomotives, passengers, and cabooses currently equipped with compliant glazing.

Separately, this final rule makes changes based on a Railroad Safety Advisory Committee (RSAC) recommendation. In 2013, FRA's RSAC recommended that FRA clarify the application of the glazing requirements in part 223 to address requirements for the next generation of high-speed trainsets. FRA agrees that aspects of the RSAC recommendation are appropriate to adopt generally for all equipment, and is therefore doing so in this final rule. Specifically, FRA believes that amending application of the phrase ''end facing glazing location'' in part 223 reduces the economic burden on the rail industry without adversely impacting safety.

In addition, FRA is clarifying the application of requirements for private cars, and eliminating compliance phase-in dates that are no longer necessary. Also, in response to comments on the NPRM, this final rule modifies application of the safety glazing requirements to passenger cars and cabooses in a railroad's fleet used only for private transportation purposes and to older locomotives used in incidental freight service.

Economic Impact

FRA believes this final rule is consistent with current industry practices and reduces the regulatory burden on the rail industry.

The estimated quantified benefits or cost savings of this rule total $1,088,489. The present value (PV), discounted at 7 percent, of the estimated quantified benefits is approximately $819,479. FRA concludes that the industry incurs only a minimal cost of approximately $6,000 to take advantage of the flexibilities in this rule. Therefore, FRA estimates the net benefit (cost savings) of this rule is approximately $813,479 (PV, 7 percent).

II. NPRM Background

Under its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address all areas of railroad safety. *See* 49 U.S.C. 20103 and 49 CFR 1.89. In the area of safety glazing, FRA has issued regulations generally found at part 223. FRA continually reviews its regulations and revises them as needed to: (1) Ensure the regulatory burden on the rail industry is not excessive; (2) clarify the application of existing requirements and remove requirements that are no longer necessary; and (3) keep pace with emerging technology, changing operational realities, and safety concerns. FRA's review of part 223 identified several compliance phase-in dates in the regulation that have passed and are no longer necessary. To improve the plain language and make the regulation more clear and concise, FRA proposed to remove the dates that have passed. Further, FRA specifically proposed amending the safety glazing requirements based on FRA's detailed analyses of the requirements and a recommendation from FRA's RSAC, discussed below.

A. Executive Orders 13563 and 13610

On January 18, 2011, the President issued *Executive Order* 13563 (Improving Regulation and Regulatory Review). *Executive Order* 13563 requires agencies to periodically conduct retrospective analyses of their existing rules to identify requirements that may be outmoded, ineffective, insufficient, or excessively burdensome.

[1] Unless otherwise specified, all references to CFR sections and parts in this document refer to title 49 of the CFR.

The *Executive Order* further requires that agencies modify, streamline, expand, or repeal any problematic regulatory provisions identified during their review. During FRA's retrospective analysis of part 223, the agency identified requirements for antiquated equipment in particular as being potentially burdensome to the regulated community. Specifically, the term ''antiquated equipment'' was not explicitly defined in the rule text, and FRA's interpretive guidance had the potential of imposing a progressively larger burden on a small segment of the industry over time. Accordingly, this final rule clarifies the application of these requirements and reduces their potential economic burden on the rail industry.

Further, on May 10, 2012, the President issued Executive Order 13610 (Identifying and Reducing Regulatory Burdens). Executive Order 13610 requires agencies to take continuing steps to reassess regulatory requirements, and where appropriate, to streamline, improve, or eliminate those requirements. Executive Order 13610 emphasizes that agencies should prioritize ''initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens.'' In response to these instructions, DOT carried out a Paperwork Reduction Act initiative that focused on identifying and eliminating paperwork burdens on the rail industry as appropriate. FRA conducted a comprehensive review of its regulations based on the guidance provided in Executive Order 13610 and determined that eliminating the stenciling requirement in § 223.17 was an opportunity to reduce the paperwork burden on the rail industry without adversely impacting safety. (FRA's Executive Order 13563 review also identified § 223.17 as a candidate for elimination.) This final rule eliminates this stenciling requirement.

B. RSAC End Facing Glazing Recommendation

In addition to the changes FRA proposed in response to these Executive Orders, FRA's proposal was also based on an RSAC recommendation addressing the application of the regulations for the next generation of high-speed trainsets. RSAC is a forum for collaborative rulemaking and program development that FRA established in March 1996. RSAC includes representation from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties.[2] When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces and task groups to develop facts and options on a particular aspect of a given task. When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full Committee for a vote. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to the Administrator of FRA. FRA then determines what action to take on the recommendation.

In March 2013, after RSAC's Passenger Safety Working Group[3] accepted a task related to high-speed rail safety, the Working Group's Engineering Task Force[4] established the Tier III Cab Glazing Task Group (Task Group) to focus on issues concerning safety glazing. The Task Group discussed glazing during four meetings held between March and May 2013. During the Task Group's last meeting, the Group reached consensus on a recommendation to apply FRA's Safety Glazing Standards to trainsets operating at speeds up to 220 miles per hour, including requirements applicable to end facing glazing locations that focus on the exposed exterior of the trainsets. On June 14, 2013, the full Committee adopted the Task Group's recommendation and presented it to FRA for consideration. Based on FRA's experience enforcing glazing requirements, FRA believes that the RSAC Task Group's approach to identifying end facing glazing locations is appropriate to adopt generally for all equipment, not only high-speed trainsets, and is therefore doing so in this final rule. FRA believes it is helpful to clarify for equipment operating at conventional speeds what exterior locations are end facing glazing locations, to reduce the economic burden on the rail industry without adversely impacting safety.

III. Discussion of Specific Comments and Conclusions

The NPRM solicited written comments from the public under the Administrative Procedure Act (APA) (5 U.S.C. 553). FRA also invited comment on a number of specific issues related to the proposed rule to develop the final

[2] A list of RSAC member groups includes the following: American Association of Private Railroad Car Owners (AAPRCO); American Association of State Highway and Transportation Officials (AASHTO); American Chemistry Council; American Petroleum Institute; American Public Transportation Association (APTA); American Short Line and Regional Railroad Association (ASLRRA); American Train Dispatchers Association (ATDA); Association of American Railroads (AAR); Association of State Rail Safety Managers (ASRSM); Association of Tourist Railroads and Railway Museums (ATRRM); Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employes Division; Brotherhood of Railroad Signalmen (BRS); Chlorine Institute; Federal Transit Administration (FTA); * Fertilizer Institute; Institute of Makers of Explosives; International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Labor Council for Latin American Advancement; * League of Railway Industry Women; * National Association of Railroad Passengers (NARP); National Association of Railway Business Women; * National Conference of Firemen & Oilers; National Railroad Construction and Maintenance Association (NRCMA); National Railroad Passenger Corporation (Amtrak); National Transportation Safety Board (NTSB); * Railway Supply Institute (RSI); Safe Travel America (STA); Secretaria de Comunicaciones y Transporte; * Sheet Metal Workers International Association (SMWIA); Transport Canada; * Transport Workers Union of America (TWU); Transportation Communications International Union/BRC (TCIU/BRC); Transportation Security Administration (TSA); * and United Transportation Union (UTU).

* Indicates associate, non-voting membership.

[3] Members of the Working Group, in addition to FRA, include the following: AAR, including members from BNSF Railway Company, CSX Transportation, Inc., and Union Pacific Railroad Company; AAPRCO; AASHTO; Amtrak; APTA, including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (Interfleet, formerly LDK Engineering, Inc.), Long Island Rail Road (LIRR), Maryland Transit Administration, Metro-North Commuter Railroad Company (Metro-North), Northeast Illinois Regional Commuter Railroad Corporation, Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA); ASLRRA; BLET; BRS; FTA; NARP; NTSB; RSI; SMWIA; STA; TCIU/BRC; TSA; TWU; and UTU.

[4] Members of the Engineering Task Force, in addition to FRA, include the following: AAR; AAPRCO; AASHTO, including California Department of Transportation, and Interfleet; APTA, including Alstom, Ansaldo Breda, Bombardier, Central Japan Railway Company, China South Locomotive and Rolling Stock Corporation, Denver Regional Transportation District, East Japan Railway Company, Faiveley Transport, GE Transportation, Japan International Transport Institute, Japan's Ministry of Land, Infrastructure, Transport and Tourism, Kawasaki, Keolis, KPS N.A., LIRR, LTK Engineering Services, Marsh, Metrolink, Metro-North, Nippon Sharyo, Parsons Brinckerhoff, PS Consulting, Safetran Systems, SEPTA, Sharma & Associates, Siemens, Stadler, STV, Talgo, Texas Central Railway, Veolia, Voith Turbo, and Wabtec; Amtrak; ASLRRA; BLET; European Railway Agency; International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), including SMWIA and UTU; NTSB; RSI, including Battelle Memorial Institute, and ENSCO; TCIU/BRC; and Transport Canada.

rule. Consideration of public comment is valuable, as it allows FRA to access additional viewpoints from interested parties and include them in the final rule when appropriate. By the close of the comment period on November 25, 2014, FRA received two sets of comments. AAR and ATRRM each submitted comments.

A. AAR's Comments

AAR requested two changes in the final rule: (1) Confirm and clarify the glazing requirements do not apply to business cars; and (2) remove the noise emissions testing decal requirement in part 210. In response to AAR's first comment, this final rule excludes certain cars in a railroad's fleet that are used only for private transportation purposes from the glazing requirements. After reviewing favorable safety data, FRA believes the glazing requirements should not apply to these cars used only for private transportation. A fuller discussion of this issue is provided in section IV.E. of this final rule.

AAR's request to remove the noise decal required in part 210 is outside the scope of this rulemaking. Therefore FRA cannot properly adopt it in this final rule. Under the APA, a final rule must be based on the subjects and issues identified in the NPRM. *See* 5 U.S.C. 553. The purpose for this requirement is to provide sufficient notice and opportunity for meaningful public participation in the rulemaking. The subjects and issues raised in the NPRM alert interested parties that rule changes are being considered so they can take full advantage of the opportunity to comment on them. The NPRM did not raise any issues related to existing noise emissions testing requirements. Because FRA did not provide sufficient notice for this issue, FRA cannot make any changes in the final rule based on this comment. Nevertheless, FRA continues to consider the merits of AAR's comment and will evaluate how to best address this issue in the future.

B. ATRRM's Comments

ATRRM expressed support for FRA's proposal and requested two modifications in the final rule: (1) Exclude historic or antiquated locomotives that are used primarily in excursion, educational, recreational, or private passenger service and also used in other limited types of service from the glazing requirements; and (2) confirm and clarify that § 223.3(c)(1) would not require an ''open window'' passenger car with windows that open wide enough to permit egress to also be equipped with a tool or implement to use to break or remove a window during an emergency.

In response to ATRRM's first comment, this final rule excludes from the glazing requirements a small number of primarily excursion locomotives that are used in incidental freight service when no other power is available. Based on its thorough review of the issue, FRA believes it can provide this relief without having an adverse impact on rail safety. A fuller discussion of this issue is provided in section IV.C. of this final rule.

In response to ATRRM's second comment, FRA confirms that § 223.3(c)(1) does not require a passenger car with windows that open wide enough to permit egress to be equipped with a tool or implement to use to break or remove a window during an emergency. FRA believes the plain language of § 223.3(c)(1) is clear, and read in conjunction with §§ 223.9(c) and 223.15(c), communicates that no tool or implement is required in such a case. Therefore, FRA believes that no change is necessary and is adopting § 223.3(c)(1) as proposed. Nevertheless, FRA takes this opportunity to clarify the language and intent of this paragraph to avoid any confusion. The purpose for requiring an emergency window exit is to help ensure passengers are not sealed inside the car during an emergency when they need to exit rapidly. If the window is open or can be opened wide enough to permit egress, passengers should be able to exit the car through that window as rapidly as they would if the window were removed by a tool or other implement. Specifically, if a window frame does not contain glass, as in an ''open air car,'' there is no need for a tool or implement to clear the space inside the window frame where the glass would otherwise be. Therefore, no tool or implement is required.

FRA carefully considered both sets of comments on the NPRM while developing this final rule. To further clarify written comments, FRA discussed the comments with the RSAC Tourist and Historic Railroads and Private Passenger Car Working Group [5] during a meeting on December 3, 2014. The discussion, although limited in scope, helped FRA understand the written comments. FRA added a copy of the meeting minutes to the docket for this proceeding. The final rule text differs from the NPRM text in part because of issues AAR and ATRRM raised in their comments. For changes to the rule text, FRA addresses each of the relevant comments in the corresponding regulatory paragraphs of the section-by-section analysis provided below.

[5] Members of the Working Group, in addition to FRA, include the following: AAR; AAPRCO; Amtrak; ASLRRA; ATRRM; NRCMA; NTSB; Railway Passenger Car Alliance; and SMART.

IV. General Overview of the Final Rule

A. Removal of the Requirement To Stencil Certified Glazing Compliance on Inside Walls of Locomotive Cabs, Passenger Cars, and Cabooses

As noted above, FRA's review of its regulations under Executive Order 13563 and Executive Order 13610 identified as a candidate for elimination § 223.17, which provided that locomotive cabs, passenger cars, and cabooses be stenciled inside on an interior wall with the type of glazing present in the equipment. In particular, Executive Order 13610 requires agencies to take continuing steps to reassess regulatory requirements and, where appropriate, to streamline, improve, or eliminate those requirements. Executive Order 13610 emphasizes that agencies should prioritize ''initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens.'' In 2012, FRA conducted a comprehensive review of its regulations based on the guidance in Executive Order 13610 and determined removal of the certified glazing stenciling requirement inside of locomotive cabs, passenger cars, and cabooses is an opportunity to reduce the paperwork burden on the rail industry without adversely impacting safety. The certified glazing stencil was originally intended as an easily identifiable method for railroads to demonstrate compliance with the safety glazing requirements contained in part 223 when large numbers of affected equipment were not equipped with part 223 glazing. However, the need for this requirement has diminished since compliance was phased in for equipment existing at the time part 223 was promulgated. (See the discussion below on removing compliance phase-in dates from part 223.) Moreover, in practice, FRA has found the stencil is not always accurate, and that each window needs to be examined to determine whether proper glazing has been applied. An easy and reliable way to determine the compliance of each window individually is to read the permanent marking on each window panel required by part 223, appendix A. Each window that is equipped with certified glazing must be permanently marked by the manufacturer to indicate the type of glazing applied, which remains unchanged for each glazing panel's service life. Appendix A requires

glazing to be tested and then marked according to the tests passed as either ''FRA Type I'' or ''FRA Type II'' glazing, depending on its location. By considering the location of the window and examining the marking, FRA inspectors can apply the requirements and determine whether the glazing use is compliant.

FRA believes the markings on the windows are more reliable than the stenciling located inside the equipment in which they are installed, and that the markings provide sufficient information to determine compliance. Therefore, FRA concludes that the § 223.17 stenciling requirement is no longer necessary, and this rule eliminates the requirement for a certified glazing stencil located inside locomotive cabs, passenger cars, and cabooses.

B. Clarification of the Term ''Antiquated Equipment''

Part 223 uses the term ''antiquated equipment'' to identify equipment excluded from the application of part 223, if the equipment is operated in only specified types of service (excursion, educational, recreational or private transportation). However, part 223 did not define the term ''antiquated equipment'' and the context in which the term was used in the regulation did not clearly indicate its meaning. During implementation of part 223, FRA identified the need to clarify the term ''antiquated equipment'' to ensure its consistent application. FRA developed guidance interpreting the term in 1989, and FRA's Associate Administrator for Safety provided it to the agency's regional safety management. Subsequently, FRA made the interpretation part of a 1990 FRA technical bulletin. For purposes of this final rule, FRA references the 1990 FRA technical bulletin (1990 Technical Bulletin) and has included it in the public docket for this rulemaking.

The 1990 Technical Bulletin stated ''antiquated equipment,'' as used in part 223, meant equipment built in 1945 or earlier. However, FRA did not explain why it distinguished between equipment built in 1945 or earlier from equipment built after 1945. FRA believes it chose 1945 as the cut-off date because it was the end of World War II, the date was approaching approximately 50 years before the date the guidance was issued, and the approaching 50-year difference in time was consistent with FRA's treatment of other older equipment. Based on FRA's experience, after 50 years certain equipment becomes antiquated and justifies distinct treatment due to significant changes in technology, including design standards and the materials used for construction. For example, FRA uses this distinction in the Freight Car Safety Standards in 49 CFR part 215. Part 215 restricts the operation of freight cars that are more than 50 years old, measured by the date of original construction, unless the operating railroad successfully petitions FRA for continued use. This requirement reflects FRA's general belief that after 50 years, freight equipment is typically outdated and often not in the best condition given its years of service. Accordingly, for purposes of safety, FRA believes that after 50 years of age, it should not treat freight equipment the same as newer equipment when used in certain types of service. As an industry practice, cars more than 50 years old are generally used only in limited freight service. However, passenger cars more than 50 years old have been successfully used for commuter service, which, to be clear, is not the type of service identified in part 223 as service for an educational, excursion, recreational, or private transportation purpose.

FRA has applied the term ''antiquated equipment'' in the enforcement of part 223 consistent with FRA's 1990 Technical Bulletin without significant opposition until industry's response to FRA's implementation of section 415 of the Rail Safety Improvement Act of 2008 (section 415), Public Law 110–432, Division A. Section 415 required the Secretary of Transportation [6] to conduct a study of tourist and historical railroads for compliance with Federal rail safety laws. While conducting the section 415 study, FRA utilized the year 1945 as a reference point in applying the glazing requirements. Because the 1990 Technical Bulletin did not clearly specify that the term ''antiquated equipment'' could be subject to a rolling 50-year calculation, an equitable reading of that technical bulletin could conclude FRA intended for the year 1945 to be a fixed date for determining whether equipment is antiquated. In other words, a person could reasonably understand that all equipment built in 1945 or earlier is antiquated, while all built after 1945 is not.

Following the section 415 study, FRA initiated several enforcement actions against owners of equipment in service that was more than 50 years old, but built after 1945. Many in the rail industry expressed surprise at these enforcement actions and, as a result, filed approximately 175 petitions for waiver from the relevant requirements contained in part 223 with FRA for equipment built after 1945. In addition to requesting relief from part 223, many petitioners argued that based on their understanding of the term ''antiquated equipment'' as used in part 223 and FRA's enforcement history (*i.e.,* they had not previously received notice of non-compliance from FRA), they believed their equipment was antiquated and therefore not subject to part 223. Many of the petitioners were represented by AAPRCO, which submitted a letter to FRA in 2009, on behalf of its members expressing concern over FRA's interpretation of the term ''antiquated equipment.'' FRA responded to AAPRCO, explaining that use of the fixed date of 1945 to determine whether equipment was antiquated was consistent with the guidance in FRA's 1990 Technical Bulletin.

Subsequently, Executive Order 13563 was issued requiring agencies to conduct a retrospective analysis of their existing rules. As noted above, that analysis was intended to identify requirements that may be outmoded, ineffective, insufficient, or excessively burdensome, and lead agencies to modify, streamline, expand, or repeal such rules based on that analysis. During FRA's retrospective analysis of the Safety Glazing Standards, FRA identified the application of its existing interpretation of ''antiquated equipment'' as potentially creating an unnecessary burden on the industry. The cost of retrofitting all non-compliant equipment built more than 50 years before the current date but after 1945 with compliant glazing would result in a considerable expense to the rail industry, would likely be too costly for some small businesses to continue operating, and would provide a nominal safety benefit. Based on this information, FRA is modifying the term ''antiquated equipment'' to reduce the burden on the rail industry. FRA believes the use of a rolling 50-year period to determine whether equipment is antiquated significantly reduces the burden on the rail industry by eliminating the cost of fitting equipment that is more than 50 years old and used only for certain purposes with compliant glazing. In other words, FRA believes that the term ''antiquated equipment,'' for purposes of part 223, should mean equipment that is more than 50 years old, not equipment that was more than 50 years old as of a certain, fixed date.

This clarification also better aligns FRA's Safety Glazing Standards with other Federal rail safety requirements that address older equipment. For example, because of its age and

[6] The Secretary delegated the responsibility to carry out this mandate to FRA. *See* 49 CFR 1.89(b).

technology, a caboose built more than 50 years ago receives special treatment as older equipment under § 215.203 of the Freight Car Safety Standards, but that same caboose was essentially treated by the Safety Glazing Standards the same as newer equipment. This rule helps classify equipment more consistently because of its age and ATRRM believes this will eliminate the need for most waivers of the glazing requirements, and waiver renewals, and remove a substantial burden on the industry.

C. Exclusion of Older Locomotives Used in Incidental Freight Service

In addition to clarifying the term ''antiquated equipment,'' in its comments, ATTRM also states FRA should clarify that the service historic or antiquated equipment operates in may exclude that equipment from the glazing requirements. Specifically, rather than exclude historic or antiquated locomotives used only for excursion, educational, recreational, or private transportation purposes, ATTRM requested that FRA exclude historic or antiquated locomotives that are used primarily in excursion, educational, recreational, or private passenger service and also in other limited types of service. For example, ATTRM stated that a steam locomotive normally used exclusively in mainline excursion service will sometimes be ''broken in'' in freight service after major mechanical work, to allow problems to be identified and corrected before the locomotive is used for a passenger train. According to ATTRM, a general system tourist railroad might also occasionally use a passenger locomotive on a non-excursion freight train if the railroad's normal freight power is temporarily out of service or unavailable. ATTRM made clear it is not seeking exclusion for locomotives used regularly in freight service but rather for ''occasional and irregular'' use.

FRA understands that all locomotives (except for a handful of newly built steam locomotives, less than ten total) currently used in excursion service would be considered antiquated based on the revised definition because they are more than 50 years old. However, many locomotives more than 50 years old used in excursion service are also used in other limited types of service but would not be excluded under the proposed rule. As a result, to comply with the proposed rule, affected railroads would need to either equip these locomotives with compliant certified glazing at a significant cost, or forgo using the locomotives for certain types of service and risk losing revenue.

FRA believes the Safety Glazing Standards should not apply to these small number of excursion locomotives that are used for limited non-excursion service when no other power is available. This is a current industry practice for approximately 120 locomotives. FRA's review of its enforcement data confirms that FRA has used its enforcement discretion consistently to permit limited use of such excursion locomotives in non-excursion service without compliant certified glazing. It also reveals that no accidents or incidents have been reported to FRA for the lack of compliant certified glazing materials in these locomotives. Based on a thorough review of this issue, FRA believes the rule can allow this current industry practice without having an adverse impact on rail safety. Therefore, this final rule provides the relief needed to permit these excursion locomotives to operate in incidental freight service, which includes the two specific scenarios ATRRM's comments identified for ''antiquated'' locomotives otherwise used only for excursion, educational, recreational, or private transportation purposes.

In this final rule, FRA makes clear that incidental freight service would include when an excursion locomotive that is more than 50 years old has finished hauling an excursion train for the day, a couple of freight cars need to be switched on the railroad's property, and no other locomotive is ready to switch the cars. Current industry practice is for the excursion locomotive to switch the freight cars. The alternative would be to start a freight locomotive not in use, conduct the required safety inspection to run it in service, and then use it to switch the freight cars. FRA believes this alternative is too burdensome for industry compared to the low safety risk incurred by using such an excursion locomotive to switch the freight cars—typically short moves conducted at fairly low speeds. This final rule allows the flexibility to use these small number of excursion locomotives as additional power in freight service under such limited circumstances. However, FRA emphasizes that these circumstances are limited. If a freight locomotive is in use and available for service on the property, the exception would not apply. Moreover, FRA expects railroads to have a sufficient number of locomotives available to satisfy their operational needs under ordinary circumstances.

FRA also makes clear that another example of incidental freight service would be breaking-in a steam locomotive more than 50 years old in freight service after major repairs are completed as described by ATRRM. This conditioning service is an opportunity to stress the steam locomotive to ensure the repairs are effective. Excursion operations provide few opportunities for conditioning such locomotives in higher tonnage trains. Moreover, these operations typically have fairly regimented schedules due to seasonal considerations and customer demands. Using these excursion locomotives in freight service for conditioning in this limited manner is also advantageous because freight service is more frequently available. Consequently, FRA is excluding this conditioning service for these older locomotives from the glazing requirements in this final rule. However, FRA intends for the period to be limited to only the time necessary to condition the locomotive for excursion service.

D. Clarification of the Terms ''Private Car'' and ''Passenger Car''

Previous amendments to part 223, which revised the definition of ''passenger car'' to clarify contemporaneous revisions to the regulation, may have caused some unintentional confusion regarding application of the glazing requirements to ''private cars.'' In 1998 and 1999, FRA issued comprehensive regulations for intercity passenger and commuter train safety, amending part 223 among other things to add requirements for emergency windows in intercity passenger and commuter trains, which part 223 has long required for passenger cars with certified glazing to facilitate occupant egress. *See* 63 FR 24630 (May 4, 1998, final rule on Passenger Train Emergency Preparedness) and 64 FR 25540 (May 12, 1999, final rule on Passenger Equipment Safety Standards), as amended at 73 FR 6370 (February 1, 2008, final rule on Passenger Train Emergency Systems). The amendments to part 223 included revising the definition of the term ''passenger car'' by specifically excluding from the definition a ''private car.'' 63 FR 24675. FRA intended for this revision of the term ''passenger car'' to clarify that requirements being established for passenger cars in intercity passenger and commuter train service only, such as new requirements in former § 223.9(d) for marking emergency windows, did not apply to private cars. *See* 63 FR 24675. It was not intended to change the existing application of the rest of part 223 to private cars. Yet, the substantive requirements contained in §§ 223.9 and 223.15 specify they apply

to ''passenger cars,'' which by a literal reading of the definition of ''passenger car'' in § 223.5 would have seemingly excluded private cars.

However, as evidenced by the ''Application'' section of part 223 (particularly § 223.3(b)(3)), FRA's intent was to continue to apply the glazing requirements of part 223 to private cars as previously specified, as no general exclusion was suggested or made. *See* 63 FR 24675. FRA believes that the rail industry has the same understanding. The application of the glazing requirements to private cars is clear, as provided in § 223.3. Section 223.3(a) states that the requirements in part 223 apply to any railroad rolling equipment operated on standard gauge track that is a part of the general railroad system of transportation. Section 223.3(b) excludes equipment used for private transportation purposes, but only if it is historical or antiquated. Nonetheless, to alleviate any confusion, FRA is amending the definition of ''passenger car,'' in § 223.5 by removing the last sentence of the existing definition that indicates ''[t]his term does not include a private car.''

E. Modification of the Application of the Safety Glazing Standards to Passenger Cars and Cabooses in a Railroad's Fleet That Are Used Only for Private Transportation Purposes

As discussed above, AAR's comments request FRA to confirm the glazing requirements in part 223 do not apply to railroad private business cars. Part 223 has not specifically used the term ''railroad private business cars,'' and AAR's comment does not provide a definition for the term. Based on FRA's experience and discussions with AAR during the Working Group meeting on December 3, 2014, FRA understands that a railroad private business car is a specially modified passenger car or caboose a railroad uses to conduct business and entertain colleagues and guests during transport. Further, FRA understands all but a small handful of railroad private business cars are more than 50 years old. Therefore, based on their age and use, almost all these cars will be excluded from the glazing requirements because of this final rule's clarification of the term ''antiquated equipment'' discussed in section IV.B, above. Nonetheless, FRA understands AAR's comment to also request that the remaining small handful of cars be excluded from the glazing requirements.

FRA agrees that the remaining railroad private business cars should be excluded from the glazing requirements due to the limited safety risk. Only a small number of invited guests and employees ride these cars and FRA has no record of any accidents or incidents (including injuries) due to the lack of certified glazing materials in these cars. FRA has exercised its discretion to allow railroad private business cars that are not antiquated to operate without certified glazing. Its use of discretion has not had an adverse impact on safety.

Based on a thorough review of this issue, FRA agrees with AAR's comment and in this final rule is excluding from the glazing requirements the remaining small handful of private business cars currently held by railroads that are not equipped with certified glazing. However, railroad private business cars that are currently equipped with certified glazing are required to continue to be equipped with certified glazing to maintain the current level of safety. In addition, all new railroad private business cars must be equipped with certified glazing. Furthermore, if a railroad's private car is used in public service, the exclusion does not apply and the car must be equipped with certified glazing. FRA continues to believe the cost of equipping a new car with certified glazing is worth the safety benefit, including new railroad private business cars.

F. Emergency Windows for Occupied Passenger Cars That Are More Than 50 Years Old But Built After 1945 and Operated in an Intercity Passenger or Commuter Train

This rule clarifies application of the emergency window requirements in part 223 to passenger cars more than 50 years old, but built after 1945, by incorporating provisions in waivers FRA's Railroad Safety Board grated (*see, e.g.,* FRA–2010–0080), without changing the existing regulatory framework for the emergency window requirements. Both parts 223 and 238 of this chapter contain requirements for emergency windows that apply to various types of passenger vehicles (*see, e.g.,* §§ 223.8, 223.9, 223.15, and 238.113). For the purposes of emergency window and other requirements, part 238 distinguishes between categories of passenger vehicles—namely, ''passenger cars'' and ''passenger equipment.'' Under § 238.5, the definition of ''passenger car'' is a subset of ''passenger equipment'' and must comply with the emergency window exit requirements in § 238.113. By contrast, the part 238 emergency window exit requirements in § 238.113 do not apply to all passenger equipment as defined by § 238.5. Instead, passenger equipment not subject to § 238.113, including a private car, must be equipped with emergency windows as provided in § 223.9(c) or § 223.15(c), as appropriate. In this rule, the application of the emergency window requirements to passenger equipment and passenger cars in part 238 is unchanged. However, a change to part 223 is needed to incorporate existing waivers of the requirements of part 223 that require emergency windows, in light of the change concerning ''antiquated equipment,'' discussed above.

Specifically, in connection with the change to the application of the term ''antiquated equipment,'' FRA is revising the language in § 223.3(b) to expressly state the exclusion provided in § 223.3(b)(3) for ''antiquated equipment,'' for purposes of emergency windows, does not apply to occupied passenger cars built after 1945 when they operate in intercity passenger or commuter train service covered by part 238 (part 238 train). *See* 49 CFR 238.3. An occupied private car operated in a train covered by the requirements of part 238 is not required to be equipped with emergency windows under part 238; these cars must be equipped with emergency windows under § 223.9(c) or § 223.15(c) of part 223, if they are not ''historical or antiquated equipment'' and are not used for solely an excursion, educational, recreational, or private purpose as applicable under § 223.3(b)(3). *See, e.g.,* 73 FR 6378. However, FRA's Railroad Safety Board has granted a series of waivers that permit such cars that are neither ''historical or antiquated'' to operate in a part 238 train without certified glazing. As a condition to the waivers, such cars must be equipped with at least four emergency windows consistent with § 223.9(c) or § 223.15(c). The waivers make clear that the minimum of four emergency windows (two on each side) must be clearly marked. As specified in § 223.5, an ''emergency window'' means a segment of a side facing glazing panel designed to permit rapid and easy removal from inside the car during an emergency. The waivers further make clear that any tool required to remove or break the window must be provided and clearly marked, with legible and understandable instructions for its use. This final rule revises part 223 to be consistent with the conditions of the waivers FRA has granted and the proposed change to application of the term ''antiquated equipment.''

FRA notes that passenger cars that are not covered by the requirements of part 238 but are occupied for an excursion, educational, recreational, or private purpose, and operate in a passenger train covered by the requirements of part 238, are subject to the same conditions as the train to which they are

coupled. Such cars are exposed to high speeds over long distances the same as the other cars in the passenger train. In addition, the end frame doors of such cars may not line up with the end frame doors on some passenger cars subject to the requirements of part 238 to which they are coupled (*e.g.,* an Amtrak Superliner). Consequently, during an accident or incident, emergency windows may be required as a primary means of egress, due to a lack of end-of-car egress. Yet, passenger cars occupied for an excursion, educational, recreational, or private use not equipped with part 223 compliant glazing and emergency windows might only be equipped with safety glass that cannot easily shatter or otherwise be easily removed without the use of a tool or other instrument, and therefore may not permit effective egress for occupants during an emergency. Such occupied cars, built after 1945, and more than 50 years old, that operate in a part 238 train, must have emergency windows to maintain the level of safety currently provided.

Consequently, in clarifying the application of part 223 to ''antiquated equipment'' by using a rolling 50-year date, rather than a fixed date, FRA believes it must continue requiring passenger cars built after 1945 and more than 50 years old to comply with the emergency window requirements in § 223.9(c) or § 223.15(c) if they are occupied and operate in an intercity or commuter passenger train subject to part 238. FRA does not believe it is appropriate to remove the current requirement that such cars be equipped with these emergency windows, especially as the number of such cars considered ''antiquated'' will increase due to this rulemaking. However, consistent with the conditions of the waivers FRA has granted, a tool or other instrument may be used to remove or break the window if the tool or other instrument is clearly marked, and legible and understandable instructions are provided for its use. Nonetheless, as discussed in section III.B in response to ATRRM's comment, this final rule does not require a passenger car with windows that open wide enough to permit egress to also be equipped with a tool or implement to use to break or remove a window during an emergency.

G. Locomotives, Passenger Cars, and Cabooses That Are More Than 50 Years Old But Built After 1945 and Equipped With Compliant Glazing

In connection with the changes to application of the term ''antiquated equipment,'' all locomotives, passenger cars, and cabooses more than 50 years old, but built after 1945 and equipped with glazing that complies with the glazing test standards in appendix A to part 223, must continue to comply with those standards. Broadening the definition of the term ''antiquated equipment'' in this rule does not diminish the level of safety currently required. Accordingly, FRA does not intend for windows currently complying with the impact test standards in appendix A to part 223 to be replaced with windows that are not. Moreover, given that such equipment would already have the necessary framing arrangements in place to support part 223-compliant glazing, FRA expects the window panels to be replaced with like window glazing. Of course, if equipment built after 1945 that is more than 50 years old is not already fitted with compliant window glazing, then such window panels (along with their supporting, framing arrangements) do not have to be installed.

H. Clarification of the Term ''End Facing Glazing Location''

Consistent with the RSAC Task Group's recommendation and to ensure consistent application of the relevant requirements, this rule revises the definition of ''end facing glazing location'' to clarify that the location means an ''exterior'' location. It also expressly identifies locations not considered to be ''end facing glazing location[s]''—namely, the coupled ends of multiple-unit (MU) locomotives or other equipment that is semi-permanently connected to each other in a train consist; and end doors at locations other than the cab end of a cab car of MU locomotive.

The former definition of ''end facing glazing location'' in § 223.5 does not specify that ''end facing'' means only a location at the exterior of a piece of equipment. As a result, the final rule clarifies that FRA does not consider windows facing an open end of a car, but located in the interior of the car, to be end facing. Thus, they do not require Type I glazing. For example, a vestibule door set back from the end frame and corner structure of a passenger car that contains a window does not require Type I glazing for the window. In this example, even if the vestibule window is exposed to the outside of the car, Type I glazing is not required. Type I glazing is not needed because the angle of incidence of a projectile to that window is significantly reduced by the presence of the structures at the end of the car located ahead of the plane of the glazing material, compared to a window aligned with the end frame of the car. Therefore, the likelihood of projectile contact is minimized.

Further, the former definition of ''end facing glazing location'' contains no qualification on the forward or rear end or the direction of travel of the equipment. In other words, all forward and all rearward facing windows could be considered end facing. This application of the term may have resulted in some confusion about FRA's enforcement of relevant glazing requirements, which FRA intends to clarify in this final rule. Accordingly, this rule revises the definition to clarify the term ''end facing glazing location'' does not apply to the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, nor does it apply to end doors at locations other than the cab end of a cab car or MU locomotive. The most notable example of an end door at a location other than the cab end of a cab car or MU locomotive is an end frame door on an Amfleet passenger car. The rule makes clear that windows in such doors do not require Type I glazing.

At the same time, this rule also revises the existing definition of ''side facing glazing location'' to clarify those locations are excluded from the definition of ''end facing glazing location'' and require Type II glazing. The former Safety Glazing Standards require that all side facing glazing locations be equipped with Type II glazing. *See* appendix A to part 223. Because the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, and end doors at locations other than the cab end of a cab car or MU locomotive are specifically excluded from the definition of ''end facing glazing location,'' those locations do not require Type I glazing. By specifically including them in the definition for ''side facing glazing location,'' the rule makes clear those locations require Type II glazing at a minimum. Thus, for example, locomotives, cabooses, and passenger cars built or rebuilt after June 30, 1980, must be equipped with certified glazing in all windows under § 223.9. The term ''certified glazing'' refers to Type I and Type II glazing, as specified in appendix A to part 223. Accordingly, for such equipment locations where certified glazing is required, either Type I or Type II glazing must be present.

This final rule also clarifies that any location which, due to curvature of the glazing material, can meet the criteria for either an end facing location or a side facing location shall be considered an end facing location. This is a

clarification that FRA identified when preparing the final rule, noting that FRA had inadvertently omitted this longstanding rule text from the proposed rule. The revised language clarifies the continued application of the regulation to equipment that contains curved glazing material that extends beyond its side or end.

I. Removal of Compliance Phase-In Dates That Have Passed and Are No Longer Applicable

This final rule removes outdated, compliance phase-in dates and related language to make the regulation clearer. When the Safety Glazing Standards were published on December 31, 1979, the regulation included compliance dates to phase-in requirements for equipment in existence at the time, in addition to requirements for new equipment. *See* 44 FR 77328, 77353–77354. As amended by final rule on December 27, 1983, the regulation included those compliance dates. *See* 48 FR 56955–56955. For example in § 223.15, ''Requirements for existing passenger cars,'' the regulation provided that certain passenger cars have until June 30, 1984, to comply with the requirements for certified glazing and emergency windows. Because the compliance phase-in period has long passed, FRA can remove the phase-in dates from part 223 without changing the substantive effect of the requirements.

V. Section-by-Section Analysis

This section-by-section analysis of this final rule explains the rationale for each section of the rule, together with the above discussion. The regulatory changes are organized by section number.

Section 223.3 Application

As discussed in section IV.B of this final rule, FRA is revising paragraph (b)(3) to clarify the meaning of the term ''antiquated equipment.'' Paragraph (b)(3)(i) clarifies the meaning of ''antiquated equipment'' by replacing the term ''antiquated'' with the phrase ''more than 50 years old.'' This change clarifies that the exclusion from the application of the rule for ''antiquated equipment'' in this section applies to equipment more than 50 years old measured from the time of original construction. This is a rolling, 50-year calculation, and no longer the fixed date of 1945 or earlier. As such, some of the equipment that was subject to the full requirements of part 223 before this final rule takes effect (because it is not yet more than 50 years old) is excluded from certain requirements when the equipment becomes more than 50 years old. To qualify for the exclusion under paragraph (b)(3)(i), when the equipment becomes more than 50 years old, the rule continues to require that the equipment be used only for excursion, educational, recreational, or private transportation purposes.

As discussed in section IV.C of this final rule, FRA is also revising paragraph (b)(3) to provide some flexibility in application of the glazing requirements to older locomotives used primarily in excursion service. Paragraph (b)(3)(i) also excludes from the glazing requirements locomotives that are historical or more than 50 years old and are used in incidental freight service. Incidental freight service includes operating a steam locomotive for conditioning purposes following major mechanical work and limited use of a passenger locomotive in freight service only when no other locomotive is available. Please note that paragraph (c), discussed below, qualifies the exclusion available under this paragraph (b)(3); both paragraphs must be read together.

As discussed in section IV.E of this final rule, FRA is also revising paragraph (b)(3) to allow existing ''business cars'' to continue to operate without certified glazing. Paragraph (b)(3)(ii) is added to exclude existing cabooses and passenger cars in a railroad's fleet on April 11, 2016 that are used only for private transportation purposes and are not currently equipped with certified glazing. This change effectively makes the exclusion in paragraph (b)(3)(i) for cabooses and passenger cars that are historic or more than 50 years old and used only for the railroad's private transportation purposes available to all of the railroad's existing cabooses and passenger cars used only for private transportation purposes.

In addition, as FRA proposed in the NPRM, FRA is revising paragraph (b)(4) to correct the reference to § 223.5. Paragraph (b)(4) formerly contained an exclusion for ''[l]ocomotives that are used exclusively in designated service as defined in § 223.5(m).'' The reference to § 223.5(m) is outdated, as paragraph lettering was removed from § 223.5, Definitions, when that section was reorganized and revised by the May 4, 1998 Passenger Train Emergency Preparedness final rule. *See* 63 FR 24630, 24642. Removing the reference to paragraph (m) of § 223.5 for internal consistency has no substantive effect on the application of the rule, as the definition of ''designated service'' in § 223.5 remains unchanged. Accordingly, this final rule removes the reference to paragraph (m) of § 223.5 so that paragraph (b)(4) instead refers to § 223.5 generally.

FRA is adding paragraph (c) to clarify the requirements applicable to equipment subject to the exclusion in paragraph (b)(3) of this section for ''antiquated equipment,'' to maintain safety in connection with the change to the application of this term for equipment built after 1945 but more than 50 years old. As discussed in sections IV.F and IV.H of this final rule, FRA is clarifying requirements for emergency windows in occupied passenger cars operated in intercity passenger or commuter trains, as well as clarifying requirements for locomotives, passenger cars, and cabooses currently equipped with compliant glazing. Paragraph (c) applies, as specified, to each locomotive, passenger car, and caboose built after 1945 more than 50 years old and used only for excursion, educational, recreational, or private transportation purposes. Specifically, paragraph (c)(1) requires each such passenger car to comply with the emergency window requirements contained in § 223.9(c) or § 223.15(c), as appropriate, when it is occupied and operates in an intercity passenger or commuter train subject to part 238 of this chapter. A tool or other instrument may be used to remove or break an emergency window if the tool or other instrument is clearly marked and legible and understandable instructions are provided for its use. Paragraph (c)(2) requires each such locomotive, passenger car, and caboose that is equipped with glazing that complies with the glazing requirements contained in appendix A to this part as of February 9, 2016, to remain in compliance with those requirements. Accordingly, the final rule will not diminish the level of safety the regulation currently provides.

Section 223.5 Definitions

FRA is revising three terms in this section: ''end facing glazing location,'' ''passenger car,'' and ''side facing glazing location.'' FRA is also defining ''incidental freight service.''

Specifically, FRA is revising the definition of ''end facing glazing location'' by making clear the location means an ''exterior'' location and that dome and observation cars are included in the category of cars subject to the application of this definition, and by expressly identifying locations not considered ''end facing glazing location[s].'' The definition clearly excludes the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, and end doors

at locations other than the cab end of a cab car of MU locomotive. Instead of considering such locations to be end facing glazing locations requiring Type I glazing, these locations are considered side facing glazing locations requiring only Type II glazing, as noted below. Please see section IV.H of this final rule for a fuller discussion of the change to the definition of ''end facing glazing location.''

FRA is adopting the changes to this definition as proposed in the NPRM but also makes clear the definition continues to provide that any location which, due to curvature of the glazing material, can meet the criteria for either an end facing location or a side facing location is considered an end facing location. This provision applies unless the location is otherwise excluded from this definition. FRA also notes that in the final rule this provision uses the more general term ''end facing'' location rather than ''front facing'' location consistent with the use of ''end facing'' glazing location in this final rule.

In addition, this rule revises the definition of ''side facing glazing location.'' The definition now includes the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, and end doors at locations other than the cab end of a cab car or MU locomotive. Instead of considering such locations to be end facing glazing locations requiring Type I glazing, these locations are considered side facing glazing locations requiring only Type II glazing due to the generally lower risk of an exterior projectile impacting the window surface.

In addition, this rule revises the definition of ''passenger car'' by removing the statement that ''[t]his term does not include a private car.'' The revision clarifies that a private car can be considered a passenger car. Please see section IV.D of this final rule for a full discussion of this change.

Finally, FRA is adding the term ''incidental freight service'' to mean the occasional and irregular use of a locomotive in freight service that is more than 50 years old and used primarily for excursion, educational, recreational, or private transportation purposes. Please see the discussion in section III.B and IV.C of this final rule, above.

Section 223.11 Requirements for Existing Locomotives

As discussed in section IV.I of this final rule, the amendments to this section remove the compliance phase-in dates and related language from the glazing requirements for existing locomotives. As noted above, part 223 phased in requirements for glazing standards by generally allowing the rail industry until June 30, 1984, to fit their existing locomotives with compliant glazing. The rule included an exception for locomotives that had their windows damaged by vandalism. Windows damaged due to vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Paragraph (c) removes the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Paragraph (d) removes the language that required windows damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed because the compliance phase-in period has long passed and all existing locomotives, other than yard locomotives excluded by this section or locomotives that satisfy the limited exclusions provided in § 223.3, are required to be equipped with compliant glazing.

No comments were received on this section and FRA accordingly adopts the changes to this section as proposed but further clarifies that existing yard locomotives continue to be excluded from the section's requirements. FRA's proposal may have inadvertently created an ambiguity whether this section's longstanding exception for existing yard locomotives continues to apply.

Section 223.13 Requirements for Existing Cabooses

As discussed in section IV.I of this final rule, the amendments to this section remove the compliance phase-in dates and related language from the glazing requirements related to existing cabooses. As noted above, part 223 phased in requirements for glazing standards by generally allowing the rail industry until June 30, 1984, to fit their existing cabooses with compliant glazing. The rule included an exception for cabooses that had their windows damaged by vandalism. Windows damaged by vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Paragraph (c) removes the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Paragraph (d) removes the language that required windows damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed because the compliance phase-in period has long passed and all cabooses, other than yard cabooses excluded by this section or those that satisfy the limited exclusions provided in § 223.3, are required to be equipped with compliant glazing.

FRA expressly invited comment on the NPRM on whether it needed to retain this section in the final rule and specifically whether its requirements could be consolidated with those for new cabooses in § 223.9(b) in a revised or new section. No comments were received on this issue and this final rule makes no change to § 223.9(b). No comments were received on § 223.13 and FRA accordingly adopts the changes to § 223.13 as proposed but clarifies that existing yard cabooses continue to be excluded from § 223.13's requirements. FRA's proposal may have inadvertently created an ambiguity whether § 223.13's longstanding exception for existing yard cabooses continues to apply.

Section 223.15 Requirements for Existing Passenger Cars

As discussed in section IV.I of this final rule, the amendments to this section remove the compliance phase-in dates and related language from the glazing requirements for existing passenger cars. As noted above, before these changes the rule generally allowed the rail industry until June 30, 1984, to fit their existing passenger cars with compliant glazing. Windows damaged by vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Paragraph (c) removes the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Paragraph (d) removes the language that required windows damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed because the compliance phase-in period has long passed and all passenger cars, other than those that satisfy the limited exclusions provided in § 223.3, are required to be equipped with compliant glazing.

FRA expressly invited comment on the NPRM on whether it needed to retain this section needed in the final rule and specifically whether its requirements could be consolidated with those for new passenger cars in § 223.9(c) in a revised or new section. No comments were received on this issue and this final rule makes no change to § 223.9(c). No comments were received on § 223.15 and FRA

accordingly adopts the changes to § 223.15 as proposed.

Section 223.17 Identification of Equipped Locomotives, Passenger Cars and Cabooses

Section § 223.17 required stenciling on the interior wall of each locomotive cab, passenger car, and caboose to identify that the equipment is fully equipped with glazing material that complies with part 223. This requirement is no longer necessary, and the final rule removes this entire section. As a result, this type of stenciling is no longer required. For a full discussion of this change, please see section IV.A of this final rule.

Appendix B to Part 223—Schedule of Civil Penalties

Appendix B to part 223 contains a schedule of civil penalties for FRA to use to enforce this part. FRA is revising the schedule of civil penalties in this final rule to reflect revisions made to part 223. Because such penalty schedules are statements of agency policy, notice and comment are not required before they are issued. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comments on the penalty schedule in the NPRM. However, FRA did not receive any comments. Accordingly, FRA is revising the penalty schedule to reflect the removal of § 223.17, Identification of Equipped Locomotives, Passenger Cars and Cabooses, from this part.

VI. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated consistent with Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT policies and procedures. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this final rule. FRA believes this final rule is consistent with current industry practices and reduces the regulatory burden on the rail industry.

The analysis includes a quantitative evaluation of the benefits of this final rule. For entities choosing to take advantage of the new flexibilities and cost savings provided in this final rule, FRA estimates there may be a minimal cost burden associated with this rule. Specifically, railroads or car owners or operators may need to purchase small hammers or other tools for occupants to use to break windows for emergency egress in passenger cars now considered ''antiquated equipment,'' because they were built after 1945 and are more than 50 years old, when these passenger cars are operated in intercity passenger or commuter trains. Additionally, railroads will probably modify existing specifications for new equipment orders to remove the requirement to stencil interior walls of the equipment as containing window glazing in full compliance with part 223. The present value of total voluntary costs affected entities may incur is estimated to be approximately $6,000 over a 10-year period.

Overall, the benefits of this rule greatly outweigh any costs that may be incurred. The revisions specified in this final rule eliminate the cost of stenciling, reduce the cost of certain new passenger cars, and reduce the number of waivers requested by the railroad industry. Over a 10-year period, this analysis finds that $1,088,489 in cost savings will accrue due to the changes. The present value of this amount is $819,479 (discounted at 7 percent). Therefore, accounting for the $6,000 in voluntarily-incurred costs to take advantage of the flexibilities provided in this final rule, the net savings of this rule is approximately $813,479.

FRA is eliminating the requirement to stencil the inside walls of locomotives, passenger cars, and cabooses as fully equipped with compliant glazing. This requirement was necessary during the implementation phase-in period of part 223 (in the 1980s), when large numbers of affected equipment were not equipped with glazing required by part 223. The stencil was a clear and easy way to determine whether compliant glazing was installed. Because the phase-in period for fitting equipment with certified glazing under part 223 has long passed, the required certification markings on the window panels have become more useful and reliable for FRA to determine compliance with part 223. The total annual cost for all affected entities to comply with the stenciling requirement is from $74,170 (Year 1) to $80,820 (Year 10) (non-discounted). This variability is due to the increase in real wages discussed in section 6 of the accompanying analysis in the docket for this rulemaking. Consequently, over a 10-year period, the analysis finds that a total of $773,841 in cost savings will accrue through the elimination of this requirement. The present value of this amount is $578,494 (discounted at 7 percent).

This rule revises definitions to help provide clarity to the rail industry and also greater consistency with other FRA regulations. Antiquated equipment will now be defined as equipment that is more than 50 years old. This significantly reduces the number of waiver petitions submitted to exclude from the glazing requirements equipment that is more than 50 years old but built after 1945 and operated in a train for an excursion, educational, recreational, or private transportation purpose. Based on past practice, FRA estimates it would have received approximately 140 initial waiver requests over the next five years (28 per year) if this rule were not issued. FRA is estimating the potential waivers that will no longer be needed over a five-year period because renewal waivers would have been needed every five years to avoid installing certified glazing. Therefore, no additional waiver applications would be expected after the fifth year. In years when the initial waiver petitions would have been submitted if this rule were not issued, the total annual cost for all affected entities would have been from $16,507 (Year 1) to $16,921 (Year 10) (non-discounted). This variability is due to the increase in real wages as discussed in section 6 of the accompanying analysis in the docket for this rulemaking. Accordingly, a total of $83,563 in cost savings will accrue over 10 years due to the reduction of initial waiver requests. The present value of this amount is $73,260 (discounted at 7 percent).

FRA has approved approximately 310 waivers of glazing requirements for equipment more than 50 years old but manufactured after 1945 and operated in a train for an excursion, educational, recreational, or private transportation purpose. If the final rule was not issued, renewal waivers would be required to be submitted every five years to continue operations. Under this final rule, these waivers are no longer necessary, saving the labor cost of preparing and submitting each waiver renewal request. The total annual cost for all affected entities to submit renewal waiver petitions would have increased from $18,275 (Year 1) to $28,066 (Year 10) (non-discounted) if this rule were not issued. This variability is due to the rise in real wages discussed in section 6 of the accompanying analysis this rulemaking's docket. Over a 10-year period, a total of $231,084 in cost savings will therefore accrue due to the reduction of renewal waivers. The present value of this amount is $167,725 (discounted at 7 percent).

FRA notes it is revising the definition of the term ''end facing glazing location'' to clarify the location means

an ''exterior'' location and expressly identify locations not considered ''end facing glazing location[s]''—namely, the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist; and end doors at locations other than the cab end of a cab car of MU locomotive. However, FRA did not evaluate any cost savings as a result of this clarification, because FRA has generally enforced the regulation consistent with this clarification.

FRA expressly requested comments on all aspects of the regulatory evaluation and its conclusions. No comments were received in response to FRA's request.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (RFA), Public Law 96–354, as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), 67 FR 53461, Aug. 16, 2002, require agency review of proposed and final rules to assess their impact on ''small entities'' for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities. Pursuant to the RFA, 5 U.S.C. 605(b), the Administrator of FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect small entities. However, the effect on these entities will be purely beneficial other than for a nominal cost savings offset, as it will reduce their costs and labor burden particularly by narrowing the class of equipment subject to the full requirements of the Safety Glazing Standards regulation.

The term ''small entity'' is defined in 5 U.S.C. 601 (section 601). Section 601(6) defines ''small entity'' as having the same meaning as ''the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4), and (5) of this section.'' In turn, section 601(3) defines a ''small business'' as generally having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Next, section 601(4) defines ''small organization'' as generally meaning any not-for-profit enterprise that is independently owned and operated, and not dominant in its field of operations. Additionally, section 601(5) defines ''small governmental jurisdiction'' in general to include governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. A for-profit railroad business firm may be considered a small entity if it has less than 1,500 employees for ''Line-Haul Operating'' railroads, and 500 employees for ''Short-Line Operating'' railroads. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

Under exceptions provided in section 601, Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Under the authority provided to it by SBA, FRA has published a ''Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws,'' which formally establishes small entities as including, among others, the following: (1) The railroads classified by the Surface Transportation Board as Class III; and (2) commuter railroads ''that serve populations of 50,000 or less.'' [7] *See* 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment.[8] For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201. FRA is using this definition of ''small entity'' for this final rule.

FRA estimates that there are 726 railroads that operate on standard gage track that is part of the general railroad system of transportation and are, therefore, subject to part 223, see 49 CFR 223.3. Of these railroads, 44 are Class I freight railroads, Class II freight railroads, commuter railroads serving populations of 50,000 or more, or intercity passenger railroads (*i.e.,* Amtrak, a Class I railroad, and the Alaska Railroad, a Class II railroad). The remaining 681 railroads are therefore assumed to be small railroads for the purpose of this assessment. However, this final rule will not impact most of these railroads because locomotives acquired by small railroads are typically older Class I locomotives already equipped with compliant glazing and stenciling. Similarly, any passenger cars acquired by small railroads from intercity passenger or commuter railroads will already be equipped with compliant glazing and stenciling.

Small railroads and private car owners will likely be affected by the clarification that certain equipment more than 50 years old is considered antiquated and thereby excluded from part 223's requirements when operated in specified service. As a result of this change, the economic burden of preparing and submitting waiver petitions will be reduced for railroads and private car owners for equipment that is more than 50 years old but built after 1945 and operated in a train for an excursion, educational, recreational, or private transportation purpose. As noted above, FRA estimates that it would

[7] In the Interim Policy Statement, 62 FR 43024, Aug. 11, 1997:

FRA defined 'small entity,' for the purpose of communication and enforcement policies, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and the Equal Access for Justice Act, 5 U.S.C. 501 *et seq.,* to include only railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous materials shippers that meet the income level established for Class III railroads (those with annual operating revenues of $20 million per year or less, as set forth in 49 CFR 1201.1–1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.

68 FR 24892, May 9, 2003. ''The Final Policy Statement issued today is substantially the same as the Interim Policy Statement.'' 68 FR 24894.

[8] In general, under 49 CFR 1201.1–1, the class into which a railroad carrier falls is determined by comparing the carrier's annual inflation-adjusted operating revenues for three consecutive years to the following scale after the dollar figures in the scale are adjusted by applying the railroad revenue deflator formula:

Class I—$250 million or more;

Class II—more than $20 million, but less than $250 million; and

Class III—$20 million or less.

49 CFR 1201.1–1(a), (b)(1). STB's General Instructions at 1–1 state that carriers are grouped into three classes for purposes of accounting and reporting. The three classes are as follows:

Class I: These carriers have annual carrier operating revenues of $250 million or more after applying STB's railroad revenue deflator formula.

Class II: These carriers have annual carrier operating revenues of less than $250 million but in excess of $20 million after applying STB's railroad revenue deflator formula.

Class III: These carriers have annual carrier operating revenues of $20 million or less after applying STB's railroad revenue deflator formula.

See also 78 FR 21007, Apr. 8, 2013. It should be noted that there are some exceptions to this general definition of the three classes of carriers. As one important example, STB treats families of railroads as a single carrier for classification purposes when those families operate within the United States as a single, integrated rail system. 49 CFR 1201–1.1(b)(1). As another example, STB considers all switching and terminal companies to be Class III carriers, regardless of their operating revenues. 49 CFR 1201–1.1(d).

receive approximately 140 initial requests for waiver of the glazing requirements over the next five years (28 per year) if this change were not made, and the approximately 310 approved waivers of glazing requirements would also have to be renewed every five years if this change were not made. When including the avoided cost of renewing the additional 140 initial waiver requests by making this change—a total of approximately 900 [9] avoided waiver petitions—the total cost savings is $240,985 over 10 years, discounted at 7 percent. Of course, the individually allocated savings to each affected railroad or private car owner will be a comparatively smaller portion of the total cost savings.

Further, for entities choosing to take advantage of the regulatory relief permitted by this change to the definition of ''antiquated equipment,'' FRA estimates that there may be a minimal cost burden associated with operation of such passenger cars in intercity passenger or commuter service, because they will continue to be required to have emergency windows. Some affected entities may choose to install small hammers or other small tools or implements to allow for emergency egress from passenger car windows when operated in an intercity passenger or commuter train. Hammers may be used to break these windows in case of an emergency. The population of private cars that operate in Amtrak trains is approximately 125 cars. FRA estimates that 80 percent of these cars will not have hammers or other tools already on board to facilitate emergency egress through windows. Therefore, for 100 of those private cars, car owners will have to purchase four hammers or other tools per car. That total cost will be approximately $5,000. Additionally, a minimal cost to copy and laminate instructions to use the hammers or other tools will also be incurred. FRA estimates this total cost to be $1,000 (approximately $10 per car). All these costs will be incurred during the first year. Therefore, the present value of all total costs is approximately $6,000. This $6,000 cost will easily be offset by the total cost savings of $240,985 from changing the definition of ''antiquated equipment,'' which is shared among all small entities. Consequently, FRA concludes this final rule will not have a significant economic impact on a substantial number of small entities.

FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities under the RFA or Executive Order 13272. Although a substantial number of small entities will be affected by this rule, none of these entities will be significantly impacted. In order to determine the significance of the economic impact for the final rule's RFA requirements, FRA expressly invited comments on the NPRM from all interested parties concerning the potential economic impact on small entities resulting from the rule. FRA did not receive comments on this issue.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this final rule for review and approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the new information and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
223.3(c)—Application: Passenger car emergency windows—marked tools with legible and understandable instructions near them to remove/break window for passenger cars built after 1945 that are more than 50 years old and operated in intercity passenger or commuter train (new requirement).	673 railroads (100 passenger cars with minimum of 4 emergency windows).	400 marked tools with legible & clear instructions.	30 minutes ...	200 hours.
223.11—Existing Locomotives: Built or rebuilt prior to July 1, 1980, equipped with certified glazing in all locomotive cab windows (revised requirement).	673 railroads	Already compliant/Already have FRA approved waivers.	N/A	N/A.
—Locomotives with cab windows broken or damaged—placed in designated service (revised requirement).	673 railroads	15 designations	30 seconds ..	0.125 hour.
—Locomotives removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	673 railroads	Certification done instantly at time of window manufacture.	N/A	N/A.
223.13—Existing Cabooses: Built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows (revised requirement).	673 railroads	Already compliant/Already have FRA approved waivers.	N/A	N/A.
—Cabooses removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	673 railroads	Certification done instantly at time of window manufacture.	N/A	N/A.
223.15—Existing Passenger Cars: Built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows plus four emergency windows (revised requirement).	673 railroads	Already compliant/Already have FRA approved waivers.	N/A	N/A.
—Passenger cars removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	673 railroads	Certification done instantly at time of window manufacture.	N/A	N/A.
Appendix A—Requests to glass/glazing manufacturers for glazing certification information (current requirement).	5 Glass/Glazing Manufacturers.	10 requests	15 minutes ...	3 hours.
—Identification of each individual unit of glazing material (current requirement).	5 Glass/Glazing Manufacturers.	25,000 pieces of glazing ...	480 pieces per hour.	52 hours.

[9] A total of approximately 900 waiver petitions will be avoided: 140 initial petitions in the first five years + 140 initial petitions renewed in the next five years + 310 approved waiver petitions renewed in the first five years + 310 approved waiver petitions renewed in the next five years.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Testing of new material (current requirement)	5 Glass/Glazing Manufacturers.	1 test	14 hours	14 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Office of Railroad Safety, FRA, at 202–493–6292, or Ms. Kimberly Toone, FRA Records Management Officer, Office of Information Technology, FRA, at 202–493–6132, or via email at the following addresses: *Robert.Brogan@dot.gov; Kim.Toone@dot.gov.*

Organizations and individuals desiring to submit comments on the collection of information requirements should send them directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, an agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this rule under the principles and criteria in Executive Order 13132. This rule will not have a substantial effect on the States or their political subdivisions, and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. In addition, FRA determined this regulatory action will not impose substantial direct compliance costs on States or their political subdivisions. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, State and local officials were involved in developing recommendations that are addressed in this rule through the RSAC, which has as permanent members two organizations directly representing State and local interests, AASHTO and ASRSM.

However, this rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and re-codified at 49 U.S.C 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–20703. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106. Moreover, the Supreme Court has interpreted the former LIA to preempt the field of locomotive safety. *See Napier* v. *Atlantic Coast Line R.R.,* 272 U.S. 605 (1926) and *Kurns* v. *Railroad Friction Products Corp.,* 132 S. Ct. 1261 (2012).

E. Environmental Impact

FRA has evaluated this final rule under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999). FRA has determined this final rule is categorically excluded from detailed environmental review under section 4(c)(20) of FRA's Procedures, ''Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.'' *See* 64 FR 28547, May 26, 1999. Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* Under section 4(c) and (e) of FRA's Procedures, FRA has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to revise and clarify existing regulations related to the use of glazing materials in the windows of locomotives, passenger cars, and cabooses. FRA does not anticipate any environmental impacts from these requirements and finds that there are no

extraordinary circumstances present in connection with this final rule.

F. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and determined it will not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

G. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule under the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. This final rule will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

H. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. When adjusted for inflation using the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics, the equivalent value of $100,000,000 in year 2014 dollars is $155,000,000.[10] The final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

I. Privacy Act

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, 65 FR 19477.

List of Subjects in 49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 223 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 223 [AMENDED]

■ 1. Revise the authority citation for part 223 to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. In § 223.3, revise paragraphs (b)(3) and (4) and add paragraph (c) to read as follows:

§ 223.3 Application.

* * * * *

(b) * * *

(3) Except as provided in paragraph (c) of this section:

(i) Locomotives, cabooses, and passenger cars that are historic or more than 50 years old and, except for incidental freight service, are used only for excursion, educational, recreational, or private transportation purposes; and

(ii) Cabooses and passenger cars in a railroad's fleet on April 11, 2016 that are used only for the railroad's private transportation purposes. Each such railroad caboose or car that is equipped with glazing that complies with the glazing requirements contained in appendix A to this part as of February 9, 2016, must remain in compliance with those requirements.

(4) Locomotives that are used exclusively in designated service as defined in § 223.5.

(c) Except as provided in paragraph (b)(3) of this section, this paragraph (c) applies, as specified, to each locomotive, passenger car, and caboose built after 1945 that is more than 50 years old and is used only for excursion, educational, recreational, or private transportation purposes.

(1) Each such passenger car must comply with the emergency window requirements contained in § 223.9(c) or § 223.15(c), as appropriate, when it is occupied and operates in an intercity passenger or commuter train subject to part 238 of this chapter. A tool or other instrument may be used to remove or break an emergency window if the tool or other instrument is clearly marked and legible and understandable instructions are provided for its use.

(2) Each such locomotive, passenger car, and caboose that is equipped with glazing that complies with the glazing requirements contained in appendix A to this part as of February 9, 2016, must remain in compliance with those requirements.

■ 3. In § 223.5, revise the definitions for ''End facing glazing location'', ''Passenger car'', and ''Side facing glazing location'' and add the definition for ''Incidental freight service'' in alphabetical order to read as follows:

§ 223.5 Definitions.

* * * * *

End facing glazing location means any exterior location where a line perpendicular to the plane of the glazing material makes a horizontal angle of 50 degrees or less with the centerline of the locomotive, caboose, or passenger car, including a dome or observation car, except for: The coupled ends of multiple-unit (MU) locomotives or other equipment that is semi-permanently connected to each other in a train

[10] *See* DOT guidance ''2015 Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995,'' May 6, 2015 (update), available electronically at *http://www.transportation.gov/office-policy/transportation-policy/2015-threshold-significant-regulatory-actions-under-unfunded.*

consist; and end doors of passenger cars at locations other than the cab end of a cab car or MU locomotive. Any location which, due to curvature of the glazing material, can meet the criteria for either an end facing location or a side facing location shall be considered an end facing location.

* * * * *

Incidental freight service means the occasional and irregular use of a locomotive in freight service that is more than 50 years old and used primarily for excursion, educational, recreational, or private transportation purposes.

* * * * *

Passenger car means a unit of rail rolling equipment intended to provide transportation for members of the general public and includes self-propelled cars designed to carry baggage, mail, express or passengers. This term includes a passenger coach, cab car, and an MU locomotive.

* * * * *

Side facing glazing location means any location where a line perpendicular to any plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive, caboose or passenger car. A side facing glazing location also means a location at the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, and a location at end doors other than at the cab end of a cab car or MU locomotive.

* * * * *

■ 4. In § 223.11, revise paragraphs (c) and (d) to read as follows:

§ 223.11 Requirements for existing locomotives.

* * * * *

(c) Except for yard locomotives and locomotives equipped as described in paragraphs (a) and (b) of this section, locomotives built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all locomotive cab windows.

(d) Except for yard locomotives, each locomotive that has a locomotive cab window that is broken or damaged so that the window fails to permit good visibility shall be—

(1) Placed in Designated Service within 48 hours of the time of breakage or damage; or

(2) Removed from service until the broken or damaged window is replaced with certified glazing.

* * * * *

■ 5. In § 223.13, revise paragraphs (c) and (d) to read as follows:

§ 223.13 Requirements for existing cabooses.

* * * * *

(c) Except for yard cabooses and cabooses equipped as described in paragraphs (a) and (b) of this section, cabooses built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all windows.

(d) Except for yard cabooses, each caboose that has a window that is broken or damaged so that the window fails to permit good visibility shall be removed from service until the broken or damaged window is replaced with certified glazing.

* * * * *

■ 6. In § 223.15, revise paragraphs (c) and (d) to read as follows:

§ 223.15 Requirements for existing passenger cars.

* * * * *

(c) Except for passenger cars described in paragraphs (a) and (b) of this section, passenger cars built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all windows and a minimum of four emergency windows.

(d) Each passenger car that has a window that is broken or damaged so that the window fails to permit good visibility shall be removed from service until the broken or damaged window is replaced with certified glazing.

* * * * *

§ 223.17 [Removed and Reserved]

■ 7. Remove and reserve § 223.17.

Appendix B to Part 223—[Amended]

■ 8. In appendix B to part 223, remove the entry for § 223.17.

Issued in Washington, DC, on February 1, 2016.

Sarah Feinberg,

Administrator.

[FR Doc. 2016–02524 Filed 2–8–16; 8:45 am]

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Proposed Rules

Federal Register
Vol. 81, No. 26
Tuesday, February 9, 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 COMMERCE

Bureau of Industry and Security

15 CFR Parts 770 and 774

[Docket No. 151030999–5999–01]

RIN 0694–AG76

Clarifications and Revisions to Military Aircraft, Gas Turbine Engines and Related Items License Requirements

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the Commerce Control List (CCL) entries for two types of items: Military aircraft and related items, and military gas turbine engines and related items. The rule would add clarifying text to the descriptions of the types of military aircraft controlled on the CCL. The lists of items that are subject only to the anti-terrorism reason for control would be clarified and expanded. This proposed rule is based on a review of the military aircraft and gas turbine engine related entries that were added to the CCL on October 15, 2013. That review was intended to ensure that the regulatory changes made by the October 15, 2013 rule are clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the export control reform effort. This proposed rule is being published simultaneously with a proposed rule by the Department of State, which is based on a review of Categories VIII and XIX of the United States Munitions List (USML). This document also furthers the retrospective regulatory review directed by the President in Executive Order 13563.

DATES: Comments must be received by March 25, 2016.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for this rule using its regulations.gov docket number: BIS–2016–0009.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AG76 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG76.

All comments (including any personally identifying information) will be made available for public inspection and copying. Commerce's full plan for retrospective regulatory review can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules*

FOR FURTHER INFORMATION CONTACT: Thomas DeFee or Jeffrey Leitz in the Office of Strategic Industries and Economic Security, Munitions Control Division by telephone at (202) 482–4506 or by email at *Thomas.DeFee@bis.doc.gov* or *Jeffrey.Leitz@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS), Department of Commerce maintains the Export Administration Regulations (EAR), including the Commerce Control List (CCL). The Export Control Reform (ECR) Initiative, a fundamental reform of the U.S. export control system announced by the President in 2010, has resulted in transfer to the CCL of items that the President has determined do not warrant control on the United States Munitions List (USML), including certain military aircraft, military gas turbine engines, and related items. The USML is part of the International Traffic in Arms Regulations (ITAR) maintained by the Department of State.

All references to the USML in this rule are to the list of defense articles that are controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations (see 27 CFR part 447). Pursuant to § 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

A core element of the ECR Initiative has been the streamlining of categories on the USML and the control on the CCL of items that the President determines do not warrant USML control. On December 10, 2010, the Department of State provided notice to the public of its intent, pursuant to the ECR Initiative, to revise the USML to create a more ''positive list'' that describes controlled items using, to the extent possible, objective criteria rather than broad, open-ended, subjective, or design intent-based criteria (*see* 75 FR 76935). As a practical matter, this meant revising USML categories so that, with some exceptions, the descriptions of defense articles that continued to warrant control under the USML did not use catch-all phrases, such as ''specially designed'' or ''specifically designed or modified,'' to control unspecified items. With limited exceptions, the defense articles that warranted control under the USML were those that provided the United States with a critical military or intelligence advantage. All other items were to become subject to the jurisdiction of the EAR. Since that time, the Departments of State and Commerce have jointly published final rules setting forth revisions for fifteen USML categories, each of which has been reorganized into a uniform and more ''positive list'' structure, and corresponding revisions to the CCL.

The advantage of revising the USML into a more positive list is that its controls can be tailored to satisfy the national security and foreign policy objectives of the ITAR by maintaining control over those defense articles that provide a critical military or intelligence advantage, or otherwise warrant control under the ITAR, without inadvertently controlling items in normal commercial use. This approach, however, requires that both the USML and the CCL be regularly revised and updated to account for technological developments, practical application issues identified

by exporters and reexporters, and changes in the military and commercial applications of items affected by the USML and the 600 series ECCNs.

As part of the ECR Initiative, certain military aircraft and gas turbine engines along with related parts, components, accessories and attachments, materials, software and technology were added to the CCL on October 15, 2013 (*see* 78 FR 22660, April 16, 2013). At the same time, the USML was amended by revising Category VIII (Aircraft and Related Articles) and by creating Category XIX (Gas Turbine Engines and Associated Equipment) to describe, for the most part, the defense articles in those categories that remained on the USML in positive, objective terms (*see* 78 FR 22740, April 16, 2013).

In 2015, the Departments of Defense, State and Commerce reviewed the implementation of these changes to ascertain the effectiveness and utility of the 2013 amendments. That review included soliciting public comments by the Department of Commerce (*see* 80 FR 11315, March 2, 2015) and the Department of State (*see* 80 FR 11314, March 2, 2015).

This notice also furthers the retrospective regulatory review directed by the President in Executive Order 13563.

Changes Proposed in This Rule

Note Regarding Castings, Forgings and Other Unfinished Products

A note stating that forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by the ECCN in which the note appears (or by specified paragraphs in that ECCN) are controlled by that ECCN. BIS intends that the policy set forth in these notes apply to all commodities that are controlled in all 600 series Product Group A ECCNs. Accordingly this rule would add the following text as a new interpretation in § 770.2:

> Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by any Product Group A (''End Items,'' ''Equipment,'' ''Accessories,'' ''Attachments,'' ''Parts,'' ''Components'' and ''Systems'') ''600 series'' ECCN are controlled in that ''600 series'' ECCN.

As a conforming change, the individual notes would be removed from ECCNs 0A604, 0A614, 3A611, 9A604 and 9A619. This change, which would merely eliminate the potential for redundancies in the EAR, is not a substantive change.

Changes to ECCN 9A610

This proposed rule would remove text currently in the ''Control(s)'' table that excludes paragraphs .t, .u, .v and .w from national security controls. Although the text of those paragraphs is taken from the Missile Technology Control Regime Annex, the commodities that they control are unmanned aerial vehicle parts, components or associated equipment that also are subject to category ML10 on the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The addition of the national security controls would not increase the number of destinations to which a license is required for the commodities controlled by these paragraphs as those paragraphs already have missile technology and regional stability controls.

This proposed rule also would revise the text of the ''Controls'' table so that the national security and regional stability reasons for control would not apply to L100 aircraft manufactured prior to 2013 or to specially designed parts and components for L100 aircraft controlled in paragraph .x. This change is to make the reasons for control that apply to pre 2013 L100 aircraft and parts consistent with the reasons for control that applied to them historically under ECCN 9A991.

The ''Related Controls'' paragraph of ECCN 9A610 would be expanded to refer to USML Category XIX and ECCN 9A619 for controls on military aircraft engines and related items.

The ''Items'' paragraph of ECCN 9A610 would be revised to clarify that the aircraft listed in Note 1 to paragraph .a are examples of aircraft types controlled in that paragraph whereas the substantive criteria for control in paragraph .a is that the aircraft be ''specially designed'' for a military use and not enumerated in USML Category VIII(a).

A new paragraph .b would be added to control L100 aircraft manufactured prior to 2013 to implement the limited applicability of national security and regional stability controls to these aircraft as described above.

A new paragraph .e would be added to control mobile aircraft arresting and engagement systems for aircraft controlled in either USML Category VIII(a) or ECCN 9A610.a.

Existing paragraph .f, which controls ground equipment specially designed for military aircraft, would be revised to incorporate into the paragraph text, the illustrative list currently in the technical note.

BIS is not proposing any changes to paragraphs .g through .s.

Paragraphs .t, .u, .v and .w would continue to control certain unmanned aerial vehicle parts, components and associated equipment. The text of these paragraphs is drawn from the Missile Technology Regime Annex and specifies range capability (paragraphs .t and .u) or range and payload capability (paragraphs .v and .w). This proposed rule would leave the control text of those paragraphs unchanged, but would add a note to each paragraph to make clear that commodities that do not meet the range or range and payload parameters specified are controlled in the ''catch all'' paragraph .x, which applies to parts, components, accessories and attachments specially designed for commodities in ECCN 9A610 or USML Category VIII that are not elsewhere specified. The addition of these notes would not be a substantive change.

This rule would make several changes to paragraph .y of ECCN 9A610. Paragraph .y.2, which currently applies to cockpit analog gauges and indicators, would apply to such gauges and indicators wherever they are located on the aircraft. Paragraph .y.8 would apply to all types of fluid filters and filter assemblies—not just hydraulic, oil and fuel system filters and filter assemblies. Paragraph .y.10 would be expanded to apply to fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets. Paragraph .y.15 would be expanded to cover mirrors whether located in the cockpit or cabin instead of just the cockpit as is now the case. Paragraph .y.20 would be made more precise to cover underwater locator beacons instead of underwater beacons as the text reads now. There are many types of underwater beacons. However, the underwater beacons installed on aircraft generally are designed to facilitate locating the aircraft if it crashes in the water. BIS's intent is to cover only the latter types of beacons. The word ''cockpit'' would be removed from paragraph .y.23, making filtered and unfiltered panel knobs, indicators, switches, buttons, and dials controlled by paragraph .y.23 wherever on the aircraft they are located.

Paragraphs .y.31 and .y.32 would be added to cover identification plates and fluid manifolds, respectively.

Changes to ECCN 9A619

This rule would make three additions to the ''Related Controls'' paragraph.

The first would state explicitly the historical practice of controlling 501–D22 gas turbine engines in ECCN 9A991.d, which is the classification that has been used for many years. The second would add a reference to USML Category XIX(f) to alert readers that some aircraft parts and components are enumerated in that paragraph. Finally, a note would be added reminding readers that the commodities enumerated in paragraph .y are subject to the controls in that paragraph rather than the broader controls elsewhere in this ECCN.

Paragraph .y.3 would be expanded to apply to fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets, instead of only fuel lines and hoses, as is now the case.

Paragraph .y.4 would be expanded to cover fluid filters and filter assemblies, instead of only fuel and oil filters, as is now the case.

Paragraph .y.5 would be revised to remove ''V-band, cushion, broomstick, hinged, and loop clamps'' from paragraph .y.5, because they would be subsumed in the reference to ''clamps'' in paragraph .y.3, and add check valves for hydraulic and pneumatic systems in its place. Such valves for aircraft are covered in ECCN 9A610.y.4. Controlling them under a .y paragraph when used in gas turbine engines adds consistency, particularly with respect to check valves used in aircraft gas turbine engines.

The existing text of paragraph .y.8—air, fuel and oil manifolds—would be changed to ''fluid manifolds.''

Changes to ECCN 9C610

ECCN 9C610 would be revised by adding references to USML Category VIII in both the heading and in paragraph .a, to make clear that materials specially designed for commodities enumerated or otherwise described in that category are controlled in ECCN 9C610.

Changes to ECCN 9C619

ECCN 9C619 would be revised by adding references to USML Category XIX in both the heading and in paragraph .a, to make clear that materials specially designed for commodities enumerated or otherwise described in that category are controlled in ECCN 9C619.

Change to ECCN 9E619

The related controls paragraph in ECCN 9E619 would be amended by removing the sentence that reads ''Technology described in ECCN 9E003 is controlled by that ECCN.'' Although true, the placement of the sentence in a 600 series ECCN could mislead readers into thinking that the order of review does not apply in this instance.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015) has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect one approved collection: Simplified Network Application Processing + System (control number 0694–0088), which includes, among other things, license applications. This collection carries an annual burden hour estimate of 31,833 hours. BIS believes that this proposed rule, if enacted in final form, will not materially affect the total number of burden hours. This proposed rule would make certain aircraft and parts, components, accessories and attachments that currently are subject to the ITAR subject to the EAR. To the extent that this change results in an increase in the number of export license applications submitted to BIS, there is likely to be a corresponding reduction in the number of license applications submitted to the Department of State, Directorate of Defense Trade Controls. This proposed rule also would require a license to only eight destinations for some aircraft and engine parts and components that currently require a license to all destinations other than Canada. To the extent that this affects the annual burden hours associated with this collection, the effect is likely to be a reduction in burden hours. Send comments regarding this burden estimate or any other aspect of this collections of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to William Arvin, BIS, at *william.arvin@bis.doc.gov*.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration certifying that this proposed rule will not have a significant impact on a substantial number of small entities. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this

rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

This proposed rule is part of a review of rules promulgated as part of the Export Control Reform Initiative to assess whether rules for transferring items from the United States are clear, workable and do not inadvertently control on the USML or in 600 series ECCNs items in normal commercial use. Consistent with the goals of that review, this proposed rule would reduce the level of control on some items and clarify the control status of other items. It does not impose any new export or reexport license requirements.

Several proposed changes would reduce the level of control on some minor parts and components such as check valves, fluid manifolds, identification plates, analog gauges and mirrors used on aircraft so that they will require a license only to eight countries rather than all destinations other than Canada as they do currently.

Other proposed changes would clarify that certain aircraft and parts, components, accessories and attachments that historically have been subject to the EAR, but that, under rules published by BIS and the Department of State as part of the Export Control Reform Initiative, were added to the International Traffic in Arms Regulations would again be subject to the EAR.

The remaining changes would provide clarifying text or additional cross references that would not change any requirements that apply to any person under the regulations.

Changing the jurisdictional status of an item from the USML to the CCL would reduce the burden on small entities (and other entities as well) through simpler license application procedures, and reduced (or eliminated) registration fees. In addition, small entities would be able to take advantage of *de minimis* treatment under the EAR for all items that this rule would transfer from the USML to the CCL, provided those items meet the applicable *de minimis* threshold level. In practice, the greatest impact of this rule on small entities would likely be reduced administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML licensing procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval and will more likely have to engage in substantial effort and expense with the risk that the government might reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license, reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the ITAR. Registration fees for manufacturers and exporters of articles on the USML start at $2,250 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increase to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There are no registration or application processing fees for applications to export items currently listed on the CCL. Once the items that are the subject to this rulemaking are removed from the USML and added to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated.

Finally, *de minimis* treatment under the EAR would become available for all items that this rule would transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S. content in that foreign-made product. This proposed rule would apply that same principle to ''600 series'' items only if the foreign made item is being exported to a country that is subject to a United States arms embargo. In all other cases, foreign-made products that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeded 25 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Conclusion

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by the reduction in the number of transactions that would require a license, simpler export license applications, reduced or eliminated registration fees, and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content.

For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

List of Subjects

15 CFR Part 770

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations, 15 CFR parts 730—774 are proposed to be amended as follows:

PART 770—[AMENDED]

■ 1. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 2. Section 770.2 is amended by adding paragraph (n) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(n) *Interpretation 14: Unfinished ''600 series'' commodities.* Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing

where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by any Product Group A (''End Items,'' ''Equipment,'' ''Accessories,'' ''Attachments,'' ''Parts,'' ''Components'' and ''Systems'') ''600 series'' ECCN are controlled in that ''600 series'' ECCN.

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

Supplement No. 1 to Part 774—The Commerce Control List

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ECCN 0A604 [Amended]

■ 4. In ECCN 0A604, remove Note 1 to 0A604.x and redesignate Note 2 to 0A604.x as Note to 0A604.x.

ECCN 0A614 [Amended]

■ 5. In ECCN 0A614, remove Note 3 to 0A614.

ECCN 3A611 [Amended]

■ 6. In ECCN 3A611, remove Note 3 to 0A611.x.

ECCN 9A604 [Amended]

■ 7. In ECCN 9A604, remove Note 1 to 9A604.x and redesignate Note 2 to 9A604.x as Note to 9A604.x.

■ 8. In ECCN 9A610, revise the ''Control(s)'' table in the ''License Requirements'' section and the ''List of Items Controlled'' section to read as follows:

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled)

License Requirements

* * * * *

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or re-exported for use in an aircraft controlled in 9A610.b; and 9A610.y.	NS Column 1
RS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or re-exported for use in an aircraft controlled in 9A610.b; and 9A610.y.	RS Column 1
MT applies to 9A610.t, .u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls

* * * * *

List of Items Controlled

Related Controls: (1) Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content. (3) See USML Category XIX and ECCN 9A619 for controls on military aircraft engines and related items.

Related Definitions: N/A

Items: a. 'Military Aircraft' ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: For purposes of paragraph .a the term 'military aircraft' means any aircraft ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a). The term includes: trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft; and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are ''unmodified'' for the purposes of this paragraph .a.

Note 2: 9A610.a does not control 'military aircraft' that:

a. Were first manufactured before 1946;

b. Do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and

c. Do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. L100 aircraft manufactured prior to 2013.

c.–d. [Reserved]

e. Mobile aircraft arresting and engagement systems for aircraft controlled by either USML Category VIII(a) or ECCN 9A610.a

f. Pressure refueling equipment and other ground equipment designed to facilitate operations in confined areas, where such equipment is ''specially designed'' for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete parachute canopies, harnesses, platforms, electronic release mechanisms ''specially designed'' for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and ''equipment'' ''specially designed'' for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, ''specially designed'' for use by a military.

k. through s. [Reserved]

t. Composite structures, laminates and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.

Note to paragraph .t. Composite structures, laminates and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a maximum range less than 300 km are controlled in paragraph .x of this entry.

u. Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

Note to paragraph .u. Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a with a maximum range less than 300 km are controlled in paragraph .x of this entry.

v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph

VIII(a) or ECCN 9A610.a. that are not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .w. Hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML, in 9A610.y, or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this entry, ECCN 9A619, or for a defense article in USML Category VIII and not elsewhere specified in the USML or the CCL, and other aircraft commodities ''specially designed'' for a military use, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Aircraft tires;

y.2. Analog gauges and indicators;

y.3. Audio selector panels;

y.4. Check valves for hydraulic and pneumatic systems;

y.5. Crew rest equipment;

y.6. Ejection seat mounted survival aids;

y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);

y.8. Fluid filters and filter assemblies;

y.9. Galleys;

y.10. Fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets;

y.11. Lavatories;

y.12. Life rafts;

y.13. Magnetic compass, magnetic azimuth detector;

y.14. Medical litter provisions;

y.15. Cockpit or cabin mirrors;

y.16. Passenger seats including palletized seats;

y.17. Potable water storage systems;

y.18. Public address (PA) systems;

y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);

y.20. Underwater locator beacons;

y.21. Urine collection bags/pads/cups/pumps;

y.22. Windshield washer and wiper systems;

y.23. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;

y.24. Lead-acid and Nickel-Cadmium batteries;

y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;

y.26. Fire extinguishers;

y.27. Flame and smoke/CO_2 detectors;

y.28. Map cases;

y.29. 'Military Aircraft' that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; *and* do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation;

y.30. ''Parts,'' ''components,'' ''accessories,'' and ''attachments,'' other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h;

y.31. Identification plates; and

y.32. Fluid manifolds.

■ 9. In ECCN 9A619, the List of Items Controlled section is amended by:

■ a. Revising the ''Related Controls'' paragraph;

■ b. Removing the note that immediately follows paragraph .e in the ''Items'' paragraph; and

■ c. Revising paragraph .y in the ''Items'' paragraph. The revisions read as follows:

9A619 Military gas turbine engines and related commodities (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: (1) Military gas turbine engines and related articles that are enumerated or otherwise described in USML Category XIX, and technical data (including software) directly related thereto, are subject to the jurisdiction of the International Traffic in Arms Regulations (ITAR). (2) Gas turbine engines designated 501–D22 are controlled in ECCN 9A991.d regardless of the aircraft type into which they will be installed. (3) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content. (4) ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML Category XIX(f) are subject to the controls of that paragraph. (5) ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in ECCN 9A619.y are subject to the controls of that paragraph.

* * * * *

Items:

* * * * *

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this entry, ECCN 9A610, or for a defense article in USML Category XIX and not elsewhere specified on the USML or in the CCL, and other commodities, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Oil tank and reservoirs;

y.2. Oil lines and tubes;

y.3. Fluid hoses, straight and unbent lines, fittings, couplings, clamps and brackets;

y.4. Fluid filters and filter assemblies;

y.5. Check valves for hydraulic and pneumatic systems;

y.6. Shims;

y.7. Identification plates;

y.8. Fluid manifolds.

ECCN 9A620 [Amended]

■ 10. In ECCN 9A620, remove the note to 9A920.b that immediately follows paragraph .x.

■ 11. In ECCN 9C610, revise the header and the ''Items'' paragraph of the ''List of Items Controlled'' section to read as follows:

9C610 Materials ''specially designed'' for commodities controlled by USML Category VIII or ECCN 9A610 and not elsewhere specified in the CCL or the USML (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items: a. Materials not elsewhere specified in the USML or the CCL and ''specially designed'' for commodities enumerated or otherwise described in USML Category VIII or ECCN 9A610 (except 9A610.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to controls of the applicable ECCN.

Note 2: Materials ''specially designed'' for both aircraft enumerated in USML Category VIII and aircraft enumerated in ECCN 9A610 are subject to the controls of this ECCN.

b. [RESERVED]

■ 12. In ECCN 9C619 revise the header and the ''Items'' paragraph of the ''List of Items Controlled'' section to read as follows:

9C619 Materials ''specially designed'' for commodities controlled by USML Category XIX or ECCN 9A619 and not elsewhere specified in the CCL or on the USML (see List of Items Controlled)

* * * * *

List of Items Controlled

* * * * *

Items:

a. Materials not elsewhere specified in the CCL or on the USML and ''specially designed'' for commodities enumerated or otherwise described in USML Category XIX or ECCN 9A619 (except 9A619.y).

Note 1: Materials enumerated elsewhere in the CCL, such as in a CCL Category 1 ECCN, are controlled pursuant to the controls of the applicable ECCN.

Note 2: Materials ''specially designed'' for both an engine enumerated in USML Category XIX and an engine enumerated in ECCN 9A619 are subject to the controls of this ECCN 9C619.

b. [Reserved]

■ 13. In ECCN 9E619, revise the ''Related Controls'' paragraph in the ''List of Items Controlled'' section to read as follows:

9E619 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of military gas turbine engines and related commodities controlled by 9A619, equipment controlled by 9B619, materials controlled by 9C619, or software controlled by 9D619 (see List of Items Controlled)

* * * * *

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category XIX are subject to the control of USML Category XIX(g).

* * * * *

Dated: January 29, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–02591 Filed 2–8–16; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 9395]

RIN 1400–AD89

Amendment to the International Traffic in Arms Regulations: U.S. Munitions List Categories VIII and XIX

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform (ECR) effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Categories VIII (aircraft and related articles) and XIX (gas turbine engines and associated equipment) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563.

DATES: The Department of State will accept comments on this proposed rule until March 25, 2016.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

- *Email: DDTCPublicComments@state.gov* with the subject line, ''ITAR Amendment—Categories VIII and XIX.''
- Internet: At *www.regulations.gov,* search for this notice by using this rule's RIN (1400–AD89).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not wish to be made public or information for which a claim of confidentiality is asserted, because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCPublicComments@state.gov.* ATTN: ITAR Amendment—USML Categories VIII and XIX.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

USML List Review

On March 2, 2015, the Department published a Notice of Inquiry requesting public comment on USML Categories VIII and XIX (*see* 80 FR 11314). This Notice of Inquiry initiated a review of these categories to ensure that they are clear, do not inadvertently control items in normal commercial use, account for technological developments, and properly implement the national security and foreign policy objectives of the reform effort. The Department will similarly review each of the various USML categories that have been revised in the context of the ECR initiative.

In response to this Notice of Inquiry, the Department received 25 comments from the public. These comments offered proposals for modifications to the phrasing of regulatory text in USML Category VIII and Category XIX. The public comments were reviewed and considered by the Department and other agencies. Where the recommended changes added to the clarity of the regulation and were consistent with ECR objectives, the Department accepted them.

All references to the USML in this rule are to the list of defense articles that are controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations (see 27 CFR part 447). Pursuant to § 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

Revision of Category VIII

This proposed rule revises USML Category VIII, covering aircraft and related articles, to describe more precisely the articles warranting control on the USML.

Paragraph (a) is revised to clarify that the controls for all paragraphs are applicable ''whether manned, unmanned, remotely piloted, or optionally piloted,'' by modifying paragraph (a)(5) to clarify the features meriting USML control, and by deleting paragraph (a)(6) and placing it into reserve, because the relevant control would be subsumed by paragraph (a)(5). Paragraphs (a)(7) and (a)(8) are modified to clarify the features meriting USML control. Paragraphs (a)(11) and (a)(13) are deleted and placed into reserve. Paragraph (a)(14) is modified to exclude L–100 aircraft manufactured prior to 2013 from the scope of control. The Note to paragraph (a) is revised to incorporate technical corrections.

Paragraph (d) is modified to delete the ''ship-based'' control parameter and to clarify the intent and scope of the control.

Notes 1 and 3 to paragraph (f) are modified to incorporate clarifying language.

Several changes are proposed within paragraph (h). Paragraph (h)(1) is modified to delete the references to ''equipment'' in order to resolve any doubt that all production and test equipment specially designed for USML Category VIII articles presently is subject to the EAR under Export Control Classification Number (ECCN) 9B610. This rule proposes to move specific types of production and test equipment for specific aircraft identified in (h)(1) to the control of the USML because they are of a nature that inherently reveals technical data directly related to the defense article. The Department requests public comment on whether the production and test equipment identified in revised paragraph (h)(30) of the proposed revisions to USML Category VIII *per se* reveal technical data directly related to a defense article.

In addition, paragraph (h)(1) is revised to update the list of subject platforms. The Note to paragraph (h)(1) is modified to incorporate technical corrections and to enhance the clarity of the note. Paragraph (h)(2) is revised to focus the scope of control on certain rotorcraft gearboxes meeting specific technical parameters, and a note to paragraph (h)(2) is added to clarify certain terminology used therein. Paragraph (h)(4)(ii) is modified to clarify the scope of control. Paragraph (h)(5) is updated to add the words ''On-aircraft'' in order to clarify the scope of control. Paragraph (h)(7) is modified to clarify the scope of control and to include control over specially designed parts and components of the subject flight control systems. Paragraph (h)(8) is modified to clarify the meaning of ''threat-adaptive autonomous flight control systems.'' Paragraph (h)(10) is modified to enhance the clarity of the control text. Paragraph (h)(13) is deleted and placed into reserve. Paragraph (h)(16) is modified to incorporate a technical correction. Paragraph (h)(18) is modified to control specially designed parts and components of the subject systems. Paragraph (h)(19) is modified to remove reference to ECCN 9A610.

Current paragraphs (h)(23) through (h)(26) are placed into reserve, with new controls added as paragraphs (h)(27) through (h)(30). Finally, the note to Category VIII is modified to update the paragraphs of paragraph (h) that are affected.

A number of commenting parties submitted observations or recommendations that pertained to sections of the ITAR other than USML Categories VIII and XIX. Additional commenting parties offered general observations or requests regarding the ECR initiative or defense trade generally. The Department is not addressing such comments in this proposed rule because they are outside the scope of the pending inquiry. The Department welcomes input from the public on these matters under separate cover and through standard means of communication, and offers guidance to industry through the efforts of the DDTC Response Team or the Advisory Opinion process. As outlined in the Notice of Inquiry referenced above, this rulemaking addresses only the USML Categories identified specifically in the Notice of Inquiry.

One commenter recommended that paragraph (a)(5) and paragraph (a)(13) be removed, and another commenter similarly recommended that paragraph (a)(6) be deleted, with paragraphs added to each entry in paragraph (a) for which the Department sought to control unmanned or optionally-piloted variants. The Department has revised these paragraphs, as described below, and modified paragraph (a) to confirm that the subject aircraft are ITAR-controlled if manned, unmanned, remotely piloted, or optionally piloted.

A commenting party stated that the term ''attack helicopters'' in paragraph (a)(4) is ambiguous, and proposed a clarifying note. The Department did not accept this recommendation, because it has received little evidence to date to indicate that ITAR users have struggled with the meaning of this language and no other commenting party expressed a similar concern.

Several commenting parties suggested that the use of the term ''military'' in Category VIII, when used in the control text as a feature that would distinguish ITAR-controlled aircraft from other aircraft (*e.g.,* in paragraph (a)(5)), did not provide sufficient clarity to allow for reliable self-classification of an aircraft. The Department accepted this suggestion and, where practical, has replaced references to ''military'' aircraft with controls impacting those aircraft that incorporate or are specially designed to incorporate a defense article. This includes revisions to paragraph (a)(5) and (a)(7).

Additional commenting parties recommended that paragraph (a)(7) be revised to specifically describe the technical parameters or capabilities that merit ITAR control in the context of intelligence, surveillance, and reconnaissance missions. The Department has elected to limit revisions to paragraph (a)(7) to those referenced above, in order to capture an appropriate range of capabilities of concern.

One commenting party recommended that paragraph (a)(8) be revised to specifically describe the technical parameters or capabilities that merit ITAR control in this context, asserting that commercial aircraft may be captured by the existing control. The Department did not accept the recommendation to add technical parameters, but has proposed revisions to the control text in order to better clarify the classes of aircraft subject to this control.

Five commenting parties observed that the control set forth in paragraph (a)(11) created a significant burden for industry, by capturing any aircraft incorporating a mission system already controlled elsewhere in the USML, and thus recommended deletion of the control. Since the mission systems at issue in this paragraph are already subject to ITAR control and there is no other described feature that causes the aircraft at issue in this paragraph to merit ITAR control, the Department accepted these recommendations and deleted the paragraph and the notes to the paragraph.

The Department did not receive public comment on paragraph (a)(12). However, public comment is requested on whether any commercial unmanned aerial vehicles have the capability described in this paragraph. In any public comment submitted in reply to this request, please provide specific

examples of the commercial models at issue.

Four commenting parties recommend revision to or deletion of paragraph (a)(13), arguing that the control is overly broad and captures all optionally piloted aircraft, including aircraft that would otherwise be controlled by the EAR. The Department accepted these comments and deleted the paragraph, while revising paragraph VIII(a) to capture all optionally piloted variants of the aircraft listed in that paragraph.

Two commenting parties recommended revision of paragraph (a)(14) to narrow the scope to capture only those aircraft platforms that provide critical military or intelligence capabilities, as well as to avoid inadvertent capture of commercial aircraft such as the L–100. The Department partially accepted the latter recommendation and excluded L–100 aircraft manufactured prior to 2013 from control under paragraph (a)(14). The Department requests public comment on the scope and effect of this control and exclusion.

Three commenting parties suggested that paragraph (a)(15)(ii) is not sufficiently clear to foreign readers, given its reliance on the military designations in paragraph (a)(15)(i) rather than specific performance criteria. While the Department believes the military designations set forth in paragraph (a)(15)(i) can be researched and understood satisfactorily using publicly available information and the relevant performance criteria can be determined based on this information, public comment is requested on whether paragraph (a)(15) captures articles that are not already controlled by paragraphs (a)(1)–(a)(14). Similar to its request for comments on paragraph (a)(15), the Department requests public comment regarding whether the scope of controls described in paragraph (a)(16) is redundant given the controls in paragraphs (a)(1)–(a)(14), and whether it effectively precludes any less sensitive aircraft from being controlled in ECCN 9A610.a that, for example, may have been once manufactured with hard points that could be used to deliver munitions.

One commenting party recommended revised control text for paragraph (a)(16), arguing that the word ''armed'' is ambiguous in its meaning. The Department did not accept this recommendation and believes that this term is sufficiently clear and understood by the public.

Two commenting parties requested clarification on the scope of paragraph (d), with respect to the relationship between this paragraph and paragraph (h)(6), as well as the use of ''specially designed'' in this paragraph. The Department observes that the reference to ''launching systems'' in paragraph (h)(6) is limited in scope to launching equipment for unmanned aerial vehicles. Additionally, the Department has revised paragraph (d) to remove the ''ship-based'' modifiers, as well as to clarify the performance characteristic for which the equipment at issue must be ''specially designed.''

One commenting party recommended no change to paragraph (e), while three commenting parties recommended deletion of the paragraph or removal of its Significant Military Equipment designation. The Department did not accept any recommendation to modify this paragraph in this rulemaking. Since it is anticipated that the concurrent Category XII revision effort may impact controls over related technologies, the Department has elected to refrain from modifying the paragraph (e) control in Category VIII pending the outcome of the Category XII review and revision process.

Three commenting parties suggested revisions to paragraph (f) or the Notes to that paragraph. Where commenting parties recommended technical clarifications or changes of terminology that did not materially alter the control, the Department did not accept these recommendations in order to maintain conformity between this paragraph and the analogous paragraphs that appear in other categories of the USML. The Department also did not accept a recommendation to limit the scope of paragraph (f) to developmental aircraft ''of the type described in VIII(a)(1)–(16)'' in favor of the existing scope of the paragraph. The Department accepted a recommendation to limit the class of modified contract affected by Note 3 to paragraph (f) to those that initiate the development of a new defense article and are dated April 16, 2014 or later.

One commenting party remarked in numerous instances on the use of ''specially designed'' with respect to components of components. The Department received no other indication in the context of this review effort that the referenced control parameter is unclear and did not agree with these comments. Similarly, two commenting parties recommended the addition of technical parameters to remove ''specially designed'' wherever possible. The Department accepts this edit to the fullest extent possible, but notes that ''specially designed'' exists in recognition of the fact that an enumeration of specific technical parameters may prove too complex or unwieldy to produce a useful regulation in some cases.

Several commenters offered recommendations to revise paragraph (h)(1), arguing that the control is overly broad or offering specific examples of technologies that are controlled by the paragraph but may be more appropriately controlled by the EAR. The Department did not accept any recommendation to remove a single technology or product from the paragraph, because such a change would be inconsistent with the national security, foreign policy, and regulatory drafting objectives of the paragraph to control as defense articles all parts and components, regardless of sophistication or similarity to items subject to the EAR, that are specially designed for the stealth and low-observable aircraft platforms of greatest concern referenced in paragraph (h)(1). However, the Department modernized the list of aircraft platforms, and removed the reference to equipment. A new paragraph (h)(30) is added to capture the limited range of equipment relevant to a defense article described in paragraph (h)(1) and meriting ITAR control. Additionally, the Department notes that not all products designed for a referenced aircraft platform are ''specially designed'' for that platform. Please refer to ITAR § 120.41 for more information.

One commenting party requested confirmation that paragraph (h)(1) does not control articles controlled elsewhere on the USML, such as an F–35 radar that would otherwise be controlled as significant military equipment (SME) under USML Category XI(a)(3). The Department confirms that the higher-level SME control is appropriate in such a scenario. The essence of the Order of Review concept is that when determining whether an item is subject to the ITAR, one must first review the enumerated and other entries on the USML that do not use a ''specially designed'' catch-all reference to unspecified ''parts'' and ''components.'' If no such references apply to the product at issue, then one must then review the ''specially designed'' catch-all provisions in the USML. If none of the USML catch-all provisions apply to the product at issue, then one must perform the same exercise within the 600 series controls of the CCL (or with the 515 controls for satellite-related items). If none of those entries apply, then one reviews the rest of the CCL as described in the EAR.

A commenting party recommended clarification with respect to the Note to paragraph (h)(1), to confirm that the paragraph's description of specially

designed and ITAR § 120.41 pertains only to paragraph (h)(1). The Department confirms that notes within the USML are intended only to pertain to the category, paragraph, or paragraph referenced in their heading; as such, the Note to paragraph (h)(1) relates only to that paragraph.

Three commenting parties recommended revision to paragraph (h)(2) to remove the reference to interconnecting drive shafts and to clarify the scope of gearboxes that merit control under this provision. The Department accepted these edits and proposes a rewritten paragraph (h)(2) that controls only certain rotorcraft gearboxes that meet specific technical criteria.

Two commenters recommended deletion of paragraph (h)(2) and an expansion of paragraph (h)(18) to control ballistic resistant gearbox parts and components. The Department partially accepted these comments. The revised control clarifies the narrowed scope of articles that merit control and is intended to address the commenters' objective of avoiding capture of items in normal commercial use.

One commenting party recommended removal of the ''specially designed parts and components therefor'' language from paragraph (h)(2). The Department rejected this comment because the revised control now sets forth specific technical criteria.

A commenter recommended revision of paragraph VIII(h)(3) to control only quick-fold systems designed for maritime operations and the specially designed parts and components thereof. In the interest of retaining the existing scope of control, the Department did not accept this recommendation.

Similarly, the Department did not accept a recommendation to remove paragraph VIII(h)(4)'s control over certain wing folding systems. This paragraph was revised as recently as July 1, 2014 to ensure that wing folding systems for commercial aircraft are not controlled as defense articles, while retaining those systems that warrant ITAR controls for foreign policy and national security reasons. The range of public comments received did not indicate that the paragraph, as revised in July 2014, required further revision at this time.

One commenting party requested clarification regarding the relationship between paragraph (h)(6) and paragraph (d) of the same category. As described above, the Department has revised paragraph (d) to provide more specific performance criteria, and further notes that the ''airborne launching systems'' referenced in paragraph (h)(6) pertain only to unmanned aerial vehicles.

A commenting party recommended addition of a Note to paragraph (h)(6) to explain the meaning of ''external stores support systems for ordnance or weapons.'' In drafting control text the Department intends to avoid the overuse of clarifying notes to the extent possible, and did not believe that the recommended Note added sufficient clarity to merit its addition.

One commenting party requested the addition of technical parameters to allow for the removal of ''specially designed'' language from paragraph (h)(7). The Department did not accept this comment but added a clarifying revision to the text of the paragraph, in order to better identify the intended scope of control, and added a control for parts and components of the systems described in this paragraph.

Similarly, the Department did not accept a recommendation to add a Note to paragraph (a)(10) to indicate that the paragraph does not control radar or radio altimeter equipment conforming to Federal Aviation Administration Technical Standard Order C87. The Department made a minor clarifying revision to the paragraph, but the balance of comments received did not indicate a degree of confusion that would require the addition of the recommended Note.

Two commenting parties recommended deletion of paragraph (h)(13), arguing that it does not control a uniquely military capability. The Department accepted these recommendations, deleted the control text of paragraph (h)(13), and placed the paragraph into reserve.

One commenter recommended the removal of text in paragraph (h)(15) relating to ''specially designed parts, components, accessories, and attachments therefor'' and moving certain connectors, cables, and cable assemblies to ECCN 9A610. The commenter argued that the only differences between the EAR and apparent ITAR variants of the subject cables are the number of connectors on the cable and the wire length between connectors. The Department did not accept this recommendation because the cables as described would not be captured by the definition of specially designed in ITAR § 120.41. The Department did not accept a similar recommended refinement of the same text to control only those specially designed parts, components, and accessories for the optical sights or slewing device of the integrated helmet. The relevant control extends to those parts, components, or accessories that meet the definition of specially designed with respect to the components described in the paragraph.

A commenting party requested clarification with respect to the words ''and computers'' in paragraph (h)(16). The Department accepted this recommendation and made a minor revision to clarify that the words ''aircraft-weapon interface units and computers'' should be read together as one concept.

One commenting party remarked that paragraphs (h)(17), (h)(19), and (h)(23) described general purpose items and thus should be deleted. As noted above, paragraph (h)(23) is placed into reserve in this rule. With respect to paragraphs (h)(17) and (h)(19), the Department did not accept these recommendations because the commenter did not provide sufficient justification or explanation for these assertions.

A commenter asked whether paragraph (h)(20) controlled all relevant classified parts, components, accessories, attachments, equipment, or systems, or if the paragraph only controlled those classified items not enumerated elsewhere in the subject category. This paragraph functions as a catch-all for classified defense articles not described elsewhere in the USML. Articles described elsewhere on the USML that are classified are controlled as specifically enumerated elsewhere in the subchapter, if applicable, or by USML Category XVII.

One commenter recommended minor revisions to paragraph (h)(20) to match the analogous entries in USML Categories IV, V, IX, X, XI, and XV. The Department accepted this comment.

Four commenting parties requested clarification of the terms ''thermal engine'' and ''thermal batteries'' as they appear in paragraphs (h)(24) and (h)(25), respectively. The Department notes that those paragraphs are deleted in this proposed rule.

A commenting party observed that paragraph VIII(k) is reserved, but in § 121.16 of this subchapter, Item 10—Category II of the Missile Technology Control Regime (MTCR) Annex references the paragraph. The MTCR Annex is beyond the scope of this review effort but the Department acknowledges the observation of an error. Once all revised USML categories are published as final rules, ITAR § 121.16 will be placed in reserve, and the parenthetical ''(MT)'' will be used at the end of each USML section containing such articles.

One commenter suggested that the reference to ECCN 9A610 in the Note to Category VIII is not helpful, because most EAR-controlled aircraft that

incorporate a defense article are classified under ECCN 9A991.b. The Department did not accept the recommendation because it is not prepared to extend a *per se* exclusion from ITAR coverage to relevant aircraft controlled under the latter ECCN. Moreover, the Department believes that a very small number of USML articles are typically incorporated into ECCN 9A991.b aircraft. Any examples to the contrary should be identified in a public comment.

A commenting party suggested that it is logically inconsistent to subject to ITAR control any spare or replacement parts for aircraft covered by the Note to Category VIII, where the spare or replacement parts are controlled by any of the USML paragraphs referenced in that Note. The Department does not agree with this comment because it continues to value the control of exports of unincorporated parts and components that would independently merit ITAR control under normal circumstances.

Revision of Category XIX

This proposed rule revises USML Category XIX, covering gas turbine engines and associated equipment, to describe more precisely the articles warranting control on the USML.

Paragraph (a) is modified to clarify the scope of controlled engines and to incorporate technical corrections. Paragraph (b) is revised to provide additional technical parameters to clarify the scope of controlled engines. With respect to paragraph (b)(1), public comment is requested on whether any commercial models exceed the capability described in this paragraph. In any public comment submitted in reply to this request, please provide specific examples of the commercial models at issue.

Paragraph (c) is modified to incorporate conforming changes and to make clear that the paragraph applies only to gas turbine engines, while paragraph (d) is modified to update the list of subject engines. The Note to paragraph (e) is modified to incorporate a conforming change.

Several changes are proposed within paragraph (f). Paragraph (f)(1) is modified to incorporate technical corrections and to update the list of subject engines. Paragraph (f)(2) introduces additional text to clarify the scope of controlled hot section components. New controls are proposed for paragraphs (f)(7) through (f)(16).

A commenting party observed that Category XIX does not currently capture developmental engines that do not meet the performance criteria of paragraphs (a) through (e), and that paragraph (g) only covers technical data directly related to defense articles. A second commenter recommended the addition of a paragraph to specifically control developmental gas turbine engines, in a manner similar to development-related paragraphs in other USML categories. The Department has revised paragraphs (a) through (c) to specifically control developmental engines that meet the technical criteria specified in those paragraphs that merit ITAR control.

Two commenting parties recommended the addition of a Note to Category XIX that would allow the Department of Commerce to license the export of certain ITAR-controlled gas turbine engines when incorporated in a military aircraft subject to the EAR and classified under a ''600 series'' ECCN. The Department accepted this recommendation. If examples exist of non-600 series production aircraft that are subject to the EAR and incorporate, in the ordinary course of civil applications, engines subject to the ITAR, please identify them in a public comment.

A commenting party recommended the deletion of ''specially designed'' in various instances throughout the category. The Department has not received information indicating that the employment of the term has frustrated the application of the controls in this category, but will closely review any relevant comments received in reply to this proposed rule.

One commenting party stated that the control text of paragraph (b), in concert with Category VIII(h)(2), frustrated commercial tilt rotor aircraft development. The Department has revised both categories to more specifically describe the parameters or characteristics that merit ITAR control. One commenter requested the removal of the T700 engine from control under paragraph (d). The Department did not accept this recommendation but has revised the list of engines subject to ITAR control under this paragraph.

Several commenters offered recommendations to revise paragraph (f)(1), arguing that the control is overly broad or offering specific examples of technologies that are controlled by the paragraph but may be more appropriately controlled by the EAR. The Department did not accept any recommendation to remove the catch-all structure of the paragraph because such a revision would be inconsistent with the national security, foreign policy, and regulatory draft objectives of the paragraph to control as defense articles all parts and components specially designed for gas turbine engines of greatest concern and as identified in paragraph (f)(1). However, the Department modernized the list of gas turbine engines, and removed the reference to equipment. Several new paragraphs are added to capture the limited range of equipment relevant to a defense article described in paragraph (f)(1) and meriting ITAR control. Additionally, the Department notes that not all products designed for a referenced gas turbine engine are ''specially designed'' for that engine. Please refer to ITAR § 120.41 for more information.

A commenting party remarked that paragraph (f)(2) does not control augmenter parts and components. The Department confirms this observation and notes that parts and components specially designed for hot section components not controlled by paragraph (f)(2) are controlled by ECCN 9A619.x.

A commenter asked whether paragraph (f)(6) controlled all relevant classified parts, components, accessories, attachments, equipment, or systems, or if the paragraph only controlled those classified items not enumerated elsewhere in the subject category. The Department observes that the paragraph functions as a catch-all for classified defense articles not described elsewhere in the USML. Articles described elsewhere on the USML that are classified are controlled as specifically enumerated elsewhere in the subchapter, if applicable, or by USML Category XVII.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (Rulemaking) and 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Notice of Inquiry on March 2, 2015 (80 FR 11314), and accepted comments for 60 days.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (the ''Act''), a ''major'' rule is a rule that the Administrator of the OMB Office of Information and Regulatory Affairs finds has resulted or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets.

The Department does not believe this rulemaking will have an annual effect on the economy of $100,000,000 or more. Articles that are being removed from coverage in the U.S. Munitions List categories contained in this rule will still require licensing for export, but from the Department of Commerce. While the licensing regime of the Department of Commerce is more flexible than that of the Department of State, it is not expected that the change in jurisdiction of these articles will result in an export difference of $100,000,000 or more.

The Department also does not believe that this rulemaking will result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets.

Executive Orders 12372 and 13132

This rulemaking 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. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35; however, the Department of State seeks public comment on any unforeseen potential for increased burden.

List of Subjects in 22 CFR 121

Arms and munitions, Classified information, Exports.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 121.1 is amended by revising U.S. Munitions List Categories VIII and XIX, to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category VIII—Aircraft and Related Articles

(a) Aircraft, whether manned, unmanned, remotely piloted, or optionally piloted, as follows (MT if the aircraft, excluding manned aircraft, has a range equal to or greater than 300 km):

*(1) Bombers;

*(2) Fighters, fighter bombers, and fixed-wing attack aircraft;

*(3) Turbofan- or turbojet-powered trainers used to train pilots for fighter, attack, or bomber aircraft;

*(4) Attack helicopters;

*(5) Unmanned aerial vehicles (UAVs) incorporating or specially designed to incorporate a defense article;

*(6) [Reserved]

*(7) Intelligence, surveillance, and reconnaissance aircraft incorporating or specially designed to incorporate a defense article;

*(8) Electronic warfare aircraft, or airborne warning and control aircraft; or command, control, and communications aircraft incorporating or specially designed to incorporate a defense article;

(9) Air refueling aircraft;

(10) Target drones;

(11) [Reserved]

(12) Aircraft capable of being refueled in-flight including hover-in-flight refueling (HIFR);

(13) [Reserved]

(14) Aircraft with a roll-on/roll-off ramp, capable of airlifting payloads over 35,000 lbs. to ranges over 2,000 nm without being refueled in-flight, and landing onto short or unimproved airfields, other than L–100 aircraft manufactured prior to 2013;

*(15) Aircraft not enumerated in paragraphs (a)(1) through (a)(14) as follows:

(i) U.S.-origin aircraft that bear an original military designation of A, B, E, F, K, M, P, R, or S; or

(ii) Foreign-origin aircraft specially designed to provide functions equivalent to those of the aircraft listed in paragraph (a)(15)(i) of this category; or

(16) Aircraft that are armed or are specially designed to be used as a platform to deliver munitions or otherwise destroy targets (*e.g.,* firing lasers, launching rockets, firing missiles, dropping bombs, or strafing);

Note 1 to paragraph (a): Aircraft specially designed for military applications that are not identified in paragraph (a) of this section are subject to the EAR and classified as ECCN 9A610, including any model of unarmed military aircraft manufactured prior to 1956, regardless of origin or designation, and unmodified since manufacture. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are considered ''unmodified'' for the purposes of this paragraph.

Note 2 to paragraph (a): ''Range'' is the maximum distance that the specified aircraft system is capable of traveling in the mode of stable flight as measured by the projection of its trajectory over the surface of the Earth. The maximum capability based on the design characteristics of the system, when fully loaded with fuel or propellant, will be taken into consideration in determining range. The range for aircraft systems will be determined independently of any external factors such as operational restrictions, limitations imposed by telemetry, data links, or other external constraints. For aircraft systems, the range will be determined for a one-way distance using the most fuel-efficient flight profile (*e.g.,* cruise speed and altitude), assuming International Civil Aviation Organization (ICAO) standard atmosphere with zero wind, but with no fuel reserve.

(b)–(c) [Reserved]

(d) Launching and recovery equipment specially designed to allow an aircraft described in paragraph (a) of this category to take off or land on a vessel described in Category VI paragraphs (a) through (c) (MT if the launching and recovery equipment is for an aircraft, excluding manned aircraft, that has a range equal to or greater than 300 km).

Note to paragraph (d): For the definition of ''range,'' see note to paragraph (a) of this category.

*(e) Inertial navigation systems (INS), aided or hybrid inertial navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) specially designed for aircraft controlled in this category or controlled in ECCN 9A610 and all specially designed components, parts, and accessories therefor (MT if the INS, IMU, or AHRS is for an aircraft, excluding manned aircraft, or missile that has a ''range'' equal to or greater than 300 km). For other inertial reference systems and related components refer to USML Category XII(d).

(f) Developmental aircraft funded by the Department of Defense via contract or other funding authorization, and specially designed parts, components, accessories, and attachments therefor.

Note 1 to paragraph (f): This paragraph does not control aircraft and specially designed parts, components, accessories, and attachments therefor (a) in production; (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (f): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (f): This paragraph is applicable only to those contracts, other funding authorizations, or modifications initiating development of a new defense article that are dated April 16, 2014, or later.

(g) [Reserved]

(h) Parts, components, accessories, attachments, associated equipment and systems, as follows:

(1) Parts, components, accessories, and attachments specially designed for the following U.S.-origin aircraft: the B–1B, B–2, F–15SE, F/A–18 E/F, EA–18G, F–22, F–35, and future variants thereof; or the F–117 or U.S. Government technology demonstrators. Parts, components, accessories, and attachments of the F–15SE and F/A–18 E/F that are common to earlier models of these aircraft, unless listed in paragraph (h) of this category, are subject to the EAR;

Note to paragraph (h)(1): This paragraph does not control parts, components, accessories, and attachments that are common to aircraft described in paragraph (a) of this category but not identified in paragraph (h)(1), and those identified in paragraph (h)(1). For example, when applying § 120.41(b)(3), a part common to only the F–16 and F—35 is not specially designed for purposes of this paragraph. A part common to only the F–22 and F–35—two aircraft models identified in paragraph (h)(1)—is specially designed for purposes of this paragraph, unless one of the other paragraphs is applicable under § 120.41(b).

(2) Rotorcraft gearboxes with internal pitch line velocities exceeding 20,000 feet per minute and able to operate 30 minutes with loss of lubrication without an emergency or auxiliary lubrication system, and specially designed parts and components therefor;

Note to paragraph (h)(2): Loss of lubrication means a situation where oil/lubrication is mostly or completely lost from a transmission/gearbox such that only a residual coating remains due to the lubrication system failure.

(3) Tail boom folding systems, stabilator folding systems or automatic rotor blade folding systems, and specially designed parts and components therefor;

(4) Wing folding systems, and specially designed parts and components therefor, for:

(i) Aircraft powered by power plants controlled under USML Category IV(d); or

(ii) Aircraft with any of the following characteristics and powered by gas turbine engines:

(A) The portion of the wing outboard of the wing fold is required for sustained flight;

(B) Fuel can be stored outboard of the wing fold;

(C) Control surfaces are outboard of the wing fold;

(D) Hard points are outboard of the wing fold;

(E) Hard points inboard of the wing fold are capable of in-flight ejection; or

(F) The aircraft is designed to withstand maximum vertical maneuvering accelerations greater than +3.5g/ − 1.5g.

(5) On-aircraft arresting gear (*e.g.,* tail hooks and drag chutes) and specially designed parts and components therefor;

(6) Bomb racks, missile launchers, missile rails, weapon pylons, pylon-to-launcher adapters, unmanned aerial vehicle (UAV) airborne launching systems, external stores support systems for ordnance or weapons, and specially designed parts and components therefor (MT if the bomb rack, missile launcher, missile rail, weapon pylon, pylon-to-launcher adapter, UAV airborne launching system, or external stores support system is for an aircraft, excluding manned aircraft, or missile that has a ''range'' equal to or greater than 300 km);

(7) Damage or failure-adaptive flight control systems, that do not consist

solely of redundant internal circuitry, specially designed for aircraft controlled in this category, and specially designed parts and components therefor;

(8) Threat-adaptive autonomous flight control systems, where a ''threat-adaptive autonomous flight control system'' is a flight control system that, without input from the operator or pilot, adjusts the aircraft control or flight path to minimize risk caused by hostile threats;

(9) Non-surface-based flight control systems and effectors (*e.g.,* thrust vectoring from gas ports other than main engine thrust vector);

(10) Radar altimeters with output power management LPI (low probability of intercept) or signal modulation (*i.e.,* frequency hopping, chirping, direct sequence-spectrum spreading) LPI capabilities (MT if for an aircraft, excluding manned aircraft, or missile that has a ''range'' equal to or greater than 300 km);

(11) Air-to-air refueling systems and hover-in-flight refueling (HIFR) systems, and specially designed parts and components therefor;

(12) Unmanned aerial vehicle (UAV) flight control systems and vehicle management systems with swarming capability (*i.e.,* UAVs interact with each other to avoid collisions and stay together, or, if weaponized, coordinate targeting) (MT if for an aircraft, excluding manned aircraft, or missile that has a ''range'' equal to or greater than 300 km);

(13) [Reserved]

(14) Lift fans, clutches, and roll posts for short take-off, vertical landing (STOVL) aircraft and specially designed parts and components for such lift fans and roll posts;

(15) Integrated helmets incorporating optical sights or slewing devices, which include the ability to aim, launch, track, or manage munitions (*e.g.,* Helmet Mounted Cueing Systems, Joint Helmet Mounted Cueing Systems (JHMCS), Helmet Mounted Displays, Display and Sight Helmets (DASH)), and specially designed parts, components, accessories, and attachments therefor;

(16) Fire control computers, stores management systems, armaments control processors, and aircraft-weapon interface units and computers (*e.g.,* AGM–88 HARM Aircraft Launcher Interface Computer (ALIC));

(17) Mission computers, vehicle management computers, and integrated core processers specially designed for aircraft controlled in this category;

(18) Drive systems and flight control systems specially designed to function after impact of a 7.62mm or larger projectile, and specially designed parts and components therefor;

(19) Thrust reversers specially designed to be deployed in flight for aircraft controlled in this category;

*(20) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note to paragraph (h)(20): Classified means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization;

(21)–(26) [Reserved]

(27) Variable speed gearboxes capable of varying output speed by 50% or greater and providing power to rotors, proprotors, propellers, propfans, or liftfans; and specially designed parts and components therefor;

(28) Electrical power or thermal management systems integrated with an engine controlled in Category XIX having any of the following:

(i) Electrical power generators that provide greater than 300kW of electrical power (per generator) with gravimetric power densities exceeding 2kW/pound;

(ii) Heat exchangers that exchange 200 kW of heat or greater into the gas turbine engine flow path;

(iii) Logic controls that maintain gas turbine engine operability during pneumatic and shaft power extraction of 2kW/pound; or

(iv) Direct-cooling thermal electronic package heat exchangers that transfers 20kW of heat or greater at 100W/cm^2 or greater;

(29) Flight control algorithms or software that aid in landing a fixed-wing aircraft on any vessel controlled in Category VI(a)–(c); or

(30) The following, if specially designed for a defense article described in paragraph (h)(1):

(i) Wind tunnel and other scale test models;

(ii) Full scale iron bird ground rigs used to test major aircraft systems;

(iii) Autonomic logistics information system (ALIS); or

(iv) Jigs, locating fixtures, templates, gauges, molds, dies, and caul plates, for production of airframe parts and components.

Note to paragraph (h)(30)(iv): ''Airframe'' means an assembled structure influencing strength, integrity or shape and also includes transparencies, flush antennas, radomes, fairings, doors, internal ducts, pylons for external stores but does not include landing gear or other readily removable items.

(i) Technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (h) of this category and classified technical data directly related to items controlled in ECCNs 9A610, 9B610, 9C610, and 9D610 and defense services using classified technical data. (See § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(j)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (see § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

Note: Inertial navigation systems, aided or hybrid inertial navigation systems, Inertial Measurement Units, and Attitude and Heading Reference Systems in paragraph (e), and parts, components, accessories, and attachments in paragraphs (h)(3)–(5), (7), (14), (17), or (19) are licensed by the Department of Commerce when incorporated in an aircraft subject to the EAR and classified under ECCN 9A610. Replacement systems, parts, components, accessories and attachments are subject to the controls of the ITAR.

* * * * *

Category XIX—Gas Turbine Engines and Associated Equipment

*(a) Turbofan and Turbojet engines (including those that are technology demonstrators, developmental engines, or variable cycle engines) capable of 15,000 lbf (66.7 kN) of thrust or greater that have any of the following:

(1) With or specially designed for thrust augmentation (afterburner);

(2) Thrust or exhaust nozzle vectoring;

(3) Parts or components controlled in paragraph (f)(6) of this category;

(4) Specially designed for sustained 30 second inverted flight or negative g maneuver; or

(5) Specially designed for high power extraction (greater than 50 percent of

engine thrust at altitude) at altitudes greater than 50,000 feet.

*(b) Turboshaft and Turboprop engines (including those that are technology demonstrators or developmental engines) that have any of the following:

(1) Capable of 1500 mechanical shp (1119 kW) or greater and specially designed with oil sump sealing when the engine is in the vertical position; or

(2) Capable of 225 specific power or greater and specially designed for armament gas ingestion and transient maneuvers, where specific power is defined as maximum takeoff shaft horsepower divided by compressor inlet flow (lbm/sec).

*(c) Gas turbine engines (including technology demonstrators, developmental engines, and variable cycle engines) specially designed for unmanned aerial vehicle systems controlled in this category, cruise missiles, or target drones (MT if for an engine used in an aircraft, excluding manned aircraft, or missile that has a ''range'' equal to or greater than 300 km).

*(d) GE38, AGT1500, CTS800, MT7, T55, TF60, HPW3000, GE3000, T408, and T700 engines.

Note to paragraph (d): Engines subject to the control of this paragraph are licensed by the Department of Commerce when incorporated in an aircraft subject to the EAR and controlled under ECCN 9A610. Such engines are subject to the controls of the ITAR in all other circumstances.

*(e) Digital engine control systems (*e.g.,* Full Authority Digital Engine Controls (FADEC) and Digital Electronic Engine Controls (DEEC)) specially designed for gas turbine engines controlled in this category (MT if the digital engine control system is for an aircraft, excluding manned aircraft, or missile that has a range equal to or greater than 300 km).

Note to paragraph (e): Digital electronic control systems autonomously control the engine throughout its whole operating range from demanded engine start until demanded engine shut-down, in both normal and fault conditions.

(f) Parts, components, accessories, attachments, associated equipment, and systems as follows:

(1) Parts, components, accessories, and attachments specially designed for the following U.S.-origin engines (and military variants thereof): F101, F107, F112, F118, F119, F120, F135, F136, F414, F415, and J402; Note to paragraph (f)(1): This paragraph does not control parts, components, accessories, and attachments that are common to engines enumerated in paragraph (a) through (d) of this category but not identified in paragraph (f)(1), and those identified in paragraph (f)(1). For example, a part common to only the F110 and F136 is not specially designed for purposes of this paragraph. A part common to only the F119 and F135—two engine models identified in paragraph (f)(1)—is specially designed for purposes of this paragraph, unless one of the other paragraphs is applicable under § 120.41(b).

*(2) Hot section components (*i.e.,* combustion chambers and liners; high pressure turbine blades, vanes, disks and related cooled structure; actively cooled low pressure turbine blades, vanes, disks and related actively cooled structures; actively cooled power turbine blades, vanes, disks and related actively cooled structures; actively cooled intermediate turbine blades, vanes, disks and related actively cooled structures; actively cooled augmenters; and actively cooled nozzles) specially designed for gas turbine engines controlled in this category;

(3) Uncooled turbine blades, vanes, disks, and tip shrouds specially designed for gas turbine engines controlled in this category;

(4) Combustor cowls, diffusers, domes, and shells specially designed for gas turbine engines controlled in this category;

(5) Engine monitoring systems (*i.e.,* prognostics, diagnostics, and health) specially designed for gas turbine engines and components controlled in this category;

*(6) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software directly related to defense articles in this subchapter or 600 series items subject to the EAR; or

(iii) Is being developed using classified information.

Note to paragraph (f)(6): ''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization;

(7) Test cells or test stands specially designed for technology demonstrator engines, developmental engines, or variable cycle engines controlled in this category;

(8) Investment casting cores, core dies, or wax pattern dies for parts or components enumerated in paragraphs (f)(1), (f)(2), or (f)(3) of this category;

(9) Pressure gain combustors specially designed for engines controlled in this category, and specially designed parts and components therefor;

(10) Three-stream fan systems that allow the movement of airflow between the streams to control fan pressure ratio or bypass ratio (by means other than use of fan corrected speed or the primary nozzle area to change the fan pressure ratio or bypass ratio), and specially designed parts, components, accessories, and attachments therefor;

(11) High pressure compressors with core-driven bypass streams that have a pressure ratio greater than one, occurring across any section of the bypass duct, and specially designed parts, components, accessories, and attachments therefor;

(12) Intermediate compressors of a three-spool compression system with an intermediate spool-driven bypass stream that has a pressure ratio greater than one, occurring across any section of the bypass duct, and specially designed parts, components, accessories, and attachments therefor;

(13) Powders specially designed for thermal or environmental barrier coating of defense articles enumerated in paragraphs (f)(1)–(f)(4) of this category;

(14) Superalloys (*i.e.,* nickel, cobalt or iron based), used in directionally solidified or single crystal casting, specially designed for defense articles enumerated in paragraphs (f)(1)–(f)(4) of this category;

(15) Imide matrix, metal matrix, or ceramic matrix composite material (*i.e.,* reinforcing fiber combined with a matrix) specially designed for defense articles enumerated in paragraphs (f)(1)–(f)(4) of this category; or

(16) The following, if specially designed for a defense article in paragraph (f)(1):

(i) Jigs, locating fixtures, templates, gauges, molds, dies, or caul plates, for production of engine parts and components; or

(ii) Test cells or test stands.

(g) Technical data (see § 120.10 of this subchapter) and defense services (see § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a) through (f) of this category and classified technical data directly related to items controlled in ECCNs 9A619, 9B619, 9C619, and 9D619 and defense services using the classified technical data. (See § 125.4 of this subchapter for exemptions.) (MT for technical data and defense services related to articles designated as such.)

(h)–(w) [Reserved]

(x) Commodities, software, and technical data subject to the EAR (see § 120.42 of this subchapter) used in or

with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technical data subject to the EAR (see § 123.1(b) of this subchapter).

* * * * *

Rose E. Gottemoeller,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2016–02587 Filed 2–8–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR–5877–P–01]

RIN 2502–AJ33

Manufactured Home Procedural and Enforcement Regulations; Revision of Exemption for Recreational Vehicles

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to revise the exemption for recreational vehicles that are not self-propelled from HUD's Manufactured Housing Procedural and Enforcement Regulations. This proposed rule is based on a recommendation adopted by the Manufactured Housing Consensus Committee (MHCC) which would define a recreational vehicle as one built on a vehicular structure, not certified as a manufactured home, designed only for recreational use and not as a primary residence or for permanent occupancy, and built and certified in accordance with either the National Fire Protection Association (NFPA) 1192–15 or American National Standards Institute (ANSI) A119.5–09 consensus standards for recreational vehicles. HUD is adopting the MHCC's recommendation but modifying it to require certification with the updated ANSI standard, A119.5–15, and by including a requirement that units claiming the ANSI A119.5–15 exemption prominently display a notice stating that the unit is designed only for recreational use, and not as a primary residence or permanent dwelling.

DATES: *Comments Due Date:* April 11, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

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

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410; telephone (202) 708–6409 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8389.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 [1] (Pub. L. 93–383, approved August 22, 1974) (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish and amend the Federal Manufactured Home Construction and Safety Standards (the Construction and Safety Standards, or Standards). When originally enacted, the Act covered mobile homes, defined as ''a structure, transportable in one or more sections, which is eight body feet or more in width and is thirty-two feet in length.'' Consequently, structures measuring less than 256 square feet were excluded from the definition of mobile home under the Act.

On May 13, 1976 (41 FR 19846), HUD issued 24 CFR part 3282, its Mobile Home Procedural and Enforcement regulations. In this regulation, HUD codified its first recreational vehicle exemption. Recognizing that recreational vehicles in excess of 256 square feet would be included in the definition of ''mobile home,'' HUD decided to exempt recreational vehicles from the scope of the regulation since they are not designed to be used as a permanent dwelling. HUD determined that, ''[r]ecreational vehicles do not fall within the definition of mobile homes and are not subject to these regulations. A recreational vehicle is a vehicle, regardless of size, which is not designed to be used as a permanent dwelling, and in which the plumbing, heating, and electrical systems contained therein may be operated without connection to outside utilities and which are self-

[1] When originally enacted as Title VI of the Housing and Community Development Act of 1974, the Act was titled the ''Mobile Home Construction and Safety Standards Act of 1974''. Section 308 of the Housing and Community Development Act of 1980 (Pub. L. 96–399, approved October 8, 1980) amended the Act by replacing ''Mobile Home'' with ''Manufactured Housing'' in the title and by replacing each reference to ''mobile home' with ''manufactured home.'' Section 599A of the Department of Housing and Urban Development's Appropriations Act for 1998 (Pub. L. 105–276, approved October 21, 1998) amended the definition of manufactured home to exclude ''any self-propelled recreational vehicle.''

propelled or towed by a light duty vehicle.''

In 1980, the Housing and Community Development Act of 1980 (Pub. L. 96–399, approved October 8, 1980) amended the definition of ''mobile home'' in the Act by striking out ''eight body feet or more in width and thirty-two body feet or more in length'' and substituting ''in traveling mode, is eight body feet or more in width or forty body feet or more in length or, when erected on site, is three hundred twenty or more square feet.'' The Housing and Community Development Act of 1980 also added a provision to the Act that exempted from the coverage, ''any structure which meets all the requirements of this paragraph [42 U.S.C. 5402(6)] except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this title.''

On August 7, 1981 (46 FR 40498), HUD proposed removing the exemption for certain recreational vehicles from its Procedural and Enforcement regulations. HUD stated that it had received numerous comments from the manufactured housing industry and from the public criticizing the exemption, and that the exemption had been difficult to apply. HUD also stated that it proposed establishing a procedure under which manufacturers of units which meet the definition of manufactured home except for the size requirements may bring their units under the jurisdiction of the Act by providing for a certification. HUD stated that the proposed certification would be easy to comply with and place a minimal burden on the manufacturer.

HUD received numerous comments, however, which were critical of the proposal to do away with the recreational vehicle exemption. As a result, relying on a conference report on the 1980 amendments that directed HUD to consider a more flexible standard for smaller manufactured homes (such as park models) whose square footage is between 320 and 400 square feet, HUD continued the exemption but expanded it to its current form. Specifically, HUD determined that recreational vehicles were exempt from HUD's Manufactured Home Construction and Safety Standards and its Procedural and Enforcement Regulations if a unit is:

(1) Built on a single chassis;

(2) 400 Square feet or less when measured at the largest horizontal projections;

(3) Self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

In 1988, HUD issued guidance to clarify the method for measuring a unit to determine whether it qualified as a recreational vehicle under HUD's exemption. In interpretative bulletin A–1–88,[2] HUD stated that ''measurements shall be taken on the exterior of the home. The square footage includes all siding, corner trim, including storage space, and area enclosed by windows, but not the roofing overhang.'' In 1997, HUD also allowed for lofts no more than 5 feet in height to be excluded from the recreational vehicle exemption's square footage requirements.[3] Since 1988, A–1–88 and HUD's loft guidance have been the sole, definitive standards for measuring for the recreational vehicle exemption.

In the fall of 2014, HUD determined that some manufacturers were producing park model recreational vehicles (PMRVs) which were in excess of the recreational vehicle exemption's 400 square foot threshold. A PMRV (also known as a recreational park trailer) is a trailer-type recreational vehicle designed to provide temporary accommodation for recreation, camping or seasonal use. PMRVs are built on a single chassis, mounted on wheels and generally have a gross trailer area not exceeding 400 square feet in the set-up mode. Based on this determination, HUD issued a memorandum on October 1, 2014, reiterating the method through which recreational vehicles should be measured to qualify for the recreational vehicle exemption.[4] As part of that memorandum and in light of changes within both the Manufactured Housing and Recreational Vehicle industries, HUD agreed to submit the memorandum to the MHCC to consider whether the current exemption required updating.

Subsequently, HUD also discovered that some Fifth Wheel Travel Trailers could also fall within HUD regulations. A Fifth-Wheel Travel Trailer is a towable recreational vehicle mounted on wheels and designed to be towed by a motorized vehicle by means of a towing mechanism that is mounted above or forward of the tow vehicle's rear axle. However, HUD has not exercised regulatory oversight over Fifth Wheel Travel Trailers and considered them as falling within the regulatory exemption.

On December 2, 2014, the MHCC considered HUD's October 1, 2014, memorandum and recommended that HUD adopt language that more clearly differentiated recreational vehicles and manufactured housing. Specifically, the MHCC stated that ''recreational vehicles, in their many shapes and sizes, are not manufactured homes and are outside of the manufactured home standards and regulations.'' It also stated there is no need for a complicated definition of recreational vehicles and recommended that HUD revise its recreational vehicle exception to provide as follows:

> Recreational vehicles are not subject to this part, part 3280. A recreational vehicle is a factory built vehicular structure designed only for recreational use and not as a primary residence or for permanent occupancy, built and certified in accordance with NFPA 1192–15 or ANSI A119.5–09 consensus standards for recreational vehicles and not certified as a manufactured home.

II. This Proposed Rule

After reviewing the MHCC's recommendation, HUD is accepting the recommendation with revision. Initially, HUD proposes to restructure the exemption by removing it from § 3282.8 and codifying it at § 3282.15. HUD is also proposing to incorporate ANSI's updated 2015 Recreational Park Trailer Standard, A119.5–15, which after review, HUD believes best reflects the current state of recreational vehicle construction. Finally, to ensure consumer awareness of the difference between manufactured housing and recreational vehicles and the construction standards used to build each, HUD is proposing to require that each ANSI A119.5–15 certified structure seeking an exemption include a notice to be prominently displayed in a temporary manner in the kitchen (*i.e.,* countertop or exposed cabinet face) until the completion of the sale transaction that explains that the manufacturer certifies that the structure is a recreational vehicle designed only for recreational use, and not for use as a primary residence or for permanent occupancy. The notice shall further explain that the manufacturer certifies that the unit has been built in accordance with ANSI A119.5–15. This notice shall be placed prominently to ensure consumers are made plainly aware of the distinction between recreational vehicles that are not self-propelled and manufactured housing, reflecting the intent of the MHCC in its recommendation to draw a clear distinction between the two products.

[2] *http://portal.hud.gov/hudportal/documents/huddoc?id=A188.pdf.*

[3] *http://portal.hud.gov/hudportal/documents/huddoc?id=loftletter.pdf.*

[4] .*http://portal.hud.gov/hudportal/documents/huddoc?id=rvmemo.pdf.*

III. Incorporation by Reference

This rulemaking proposes to incorporate ANSI A119.5–15 and NFPA 1192–15 consensus standards for Recreational Vehicles by reference. The ANSI A119.5–15 standard covers fire and life safety criteria and plumbing for PMRVs considered necessary to provide a reasonable level of protection from loss of life from fire and explosion. The NFPA 1192–15 standard provides the minimum construction standards considered necessary to protect against loss of life from fire and explosion for non-Park Model Recreational Vehicles. Both ANSI A119.5–15 and NFPA 1192–15 are available for review and comment via read-only, electronic access. NFPA 1192–15 is available for review at *http://www.nfpa.org/freeaccess.* ANSI A119.5–15 is available for review at *www.rvia.org/?ESID=A119.*

IV. Specific HUD Questions for Public Comment

The public is invited to comment on any of the specific provisions included in this proposed rule and is also invited to comment on the following questions and on any other related matters or suggestions regarding this proposed rule:

1. What if any costs beyond the notice requirements for recreational vehicle manufacturers seeking an ANSI A119.5 exception would be imposed on recreational vehicle manufacturers as a result of the implementation of this proposed rule? Are PMRVs that meet HUD's statutory and regulatory definitions of ''manufactured homes'' currently being constructed outside the scope of ANSI A119.5? If so, how many units are being built? What would be the costs of requiring these manufacturers to build to ANSI A119.5 in order to take advantage of the exemption? Would it be more efficient and advantageous for HUD to exercise direct regulatory oversight over this portion of the industry? What would be the costs and benefits of doing so?

2. In what manner, if any, should HUD ensure that recreational vehicles conforming to NFPA 1192–2015 be certified to be exempt from the provisions of HUD's Manufactured Home Procedural and Enforcement Regulations? For example, should HUD require that a Notice of certification be provided in each such recreational vehicle built to NFPA 1192–15 similar to the notice being proposed for PMRVs or should other methods be considered such as a label to be exempt from HUD's regulations?

3. As described in the preamble to this proposed rule, HUD has not exercised regulatory oversight over Fifth Wheel Recreational Vehicles that might meet the statutory and regulatory definitions of ''manufactured home,'' This proposed rule proposes to except Fifth Wheel Recreational Vehicles from regulatory oversight. Should HUD take a different approach and begin exercising regulatory oversight of these units that meet the statutory and regulatory definitions of ''manufactured home?'' What are the costs and benefits of bringing these units within HUD oversight? Should HUD exercise any regulatory authority over Fifth Wheelers or other forms of recreational vehicles?

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and it was not reviewed by the Office of Management and Budget (OMB). This proposed rule revises the definition of recreational vehicle to clarify the types of recreational vehicles excepted by 24 CFR parts 3280 and 3282. In the past, both consumers and manufacturers of recreational vehicles have questioned whether certain recreational vehicles are subject to HUD's Construction and Safety Standards, codified in 24 CFR part 3280, and HUD's Manufactured Home Procedural and Enforcement Regulations, codified in 24 CFR part 3282. This proposed rule would provide that recreational vehicles are excepted from HUD regulation if the unit is built in conformance with either NFPA 1192–15, Standard for Recreational Vehicles, or ANSI A119.5–15, Recreational Park Trailer Standard. This rulemaking is not significant because it proposes to clarify rather than change or add substance to the existing regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is HUD's position that this proposed rule would not have a significant economic impact on a substantial number of small entities. HUD and MHCC have recognized the benefit of clarifying the current recreational vehicle exemption to allow recreational vehicle manufacturers to certify certain units as recreational vehicles under a streamlined process. This proposed rule is intended to promote this goal by ensuring that recreational vehicle manufacturers have a clear understanding of which units qualify for the recreational vehicle exemption. In addition to benefiting the consumer by providing clarity regarding the manufacturing standards used to construct the unit, this proposed rule would reduce the paperwork burden and costs of construction delays on recreational vehicle manufacturers. Furthermore, this proposed rule's notice requirement would not have a significant economic impact on a substantial number of small entities, as the notice in question may be produced and displayed within a unit at marginal expense to the manufacturer. Easing the process for recreational vehicle certification assists manufacturers, while the notice requirement supports achievement of the goal of ensuring a clear distinction between recreational vehicle structures and residential manufactured housing. Accordingly, the undersigned certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's view that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives and the statutory requirements.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In

accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The burden of information collection in this proposed rule is estimated as follows:

Information collection	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Total annual burden hours	Hourly cost	Total annual cost
§ 3282.15	17	223	3791	0.1	378.1	[1] $30.63	$11,581.20
Totals	17	223	3791	0.1	378.1	30.63	11,581.20

[1] Hourly rate based on GS–11, Step 1 salary ($63,722 per year).

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication date. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–5776–P–01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947; and Colette Pollard, HUD Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 2204, Washington, DC 20410.

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection online at *http://www.regulations.gov,* and in person between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Manufactured Housing Program is 14.171.

List of Subjects

24 CFR Part 3280

Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend parts 3280 and 3282 of title 24 of the Code of Federal Regulations, as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. In § 3280.2, revise the definition of ''Manufactured home'' to read as follows:

§ 3280.2 Definitions.

* * * * *

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. This term includes all structures that meet the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the construction and safety standards set forth in this part. The term does not include any recreational vehicle as specified in § 3282.15 of this chapter. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 3. The authority citation for part 3282 is revised to read as follows:

Authority: 28 U.S.C. 2461, 42 U.S.C. 3535(d), 5403, and 5424.

§ 3282.8 [Amended]

■ 4. In § 3282.8, remove and reserve paragraph (g).

■ 5. Add § 3282.15 to subpart A to read as follows:

§ 3282.15 Exception for recreational vehicles.

(a) *Exception.* A recreational vehicle that meets the requirements of this section is exempt from 24 CFR parts 3280 and 3282.

(b) *Definition.* A Recreational Vehicle is:

(1) A factory built vehicular structure, not certified as a manufactured home;

(2) Designed only for recreational use and not as a primary residence or for permanent occupancy; and is either:

(3) Built and certified in accordance with either the NFPA 1192–15, Standard for Recreational Vehicles or ANSI A119.5–15, Recreational Park Trailer Standard as provided by paragraph (c) of this section; or

(4) Any vehicle which is self-propelled.

(c) *Notice and certification requirements.* In order to be exempt, an ANSI A119.5–15 certified recreational vehicle must contain a Notice prominently displayed in a temporary manner in the kitchen (*i.e.,* countertop or exposed cabinet face) which must read as follows:

(1) *Title of Notice.* The title of the Notice shall be ''*****NOTICE*****'' which shall be legible and typed using bold letters at least 1 inch in size.

(2) *Content of Notice.* The content of the notice text shall be as follows:

The Manufacturer of this unit certifies that it is a Park Model Recreational Vehicle designed only for recreational use, and not for use as a primary residence or for permanent occupancy. The manufacturer of this unit further certifies that this unit has been built in accordance with the ANSI A119.5–15 consensus standard for Park Model Recreational Vehicles.

(3) *Text of Notice.* The text of the Notice, aside from the Notice's title shall be legible and typed using letters at least ½ inch in size.

(4) *Removal of Notice.* The Notice shall not be removed by any party until the entire sales transaction has been completed. A sales transaction is considered complete as defined under § 3282.252(b).

Dated: January 4, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2016–02387 Filed 2–8–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

[Docket No. SLSDC 2016–0003]

RIN 2135–AA38

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2016 navigation season, which are effective only in Canada. An amendment to increase the minimum charge per lock for those vessels that are not pleasure craft or subject in Canada to tolls under items 1 and 2 of the Tariff for full or partial transit of the Seaway will apply in the U.S. (See **SUPPLEMENTARY INFORMATION**.)

DATES: Comments are due March 10, 2016.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *http://www.Regulations.gov;* or in person at the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is proposing to revise 33 CFR 402.12, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada beginning in the 2016 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice or comment is necessary on these amendments.

The SLSDC is proposing to amend 33 CFR 402.12, ''Schedule of tolls'', to increase the minimum charge per vessel per lock for full or partial transit of the Seaway from $26.92 to $27.46. This charge is for vessels that are not pleasure craft or subject in Canada to the tolls under items 1 and 2 of the Tariff. This increase is due to higher operating costs at the locks.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, et reg.) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for Part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

■ 2. In § 402.3, add definitions of ''Gateway Incentive'', ''Toll reduction'', and ''Volume commitment'' in alphabetical order to read as follows:

§ 402.3 Interpretation.

* * * * *

Gateway Incentive means a percentage reduction, as part of an incentive program, negotiated and offered on applicable cargo tolls for shipments of a specific commodity diverted to the Seaway from a competing gateway.

* * * * *

Toll reduction means the negotiated percentage of refund on applicable cargo tolls under the Gateway Incentive program.

* * * * *

Volume commitment means the negotiated annual cargo tonnage, with a minimum of 250,000 metric tons per year, a shipper must reach for the negotiated toll reduction under the Gateway Incentive to become applicable.

* * * * *

■ 3. Revise paragraph (a) of § 402.4 to read as follows:

§ 402.4 Tolls.

(a) Every vessel entering, passing through or leaving the Seaway shall pay a toll that is the sum of each applicable charge in § 402.12. Each charge is calculated on the description set out in column 1 of § 402.12 and the rate set out in column 2 or 3.

* * * * *

■ 4 . Redesignate §§ 402.8, 402.9. 402.10, 402.11, 402.12 and 402.13 as 402.9, 402.10, 402.11, 402.12, 402.13 and 402.14 respectively.

■ 5. Add a new § 402.8 to read as follows:

§ 402.8 Gateway Incentive.

(a) To be eligible for the Gateway Incentive, cargoes, must presently be moving between a specific origin and destination via other competing gateways.

(b) To be eligible for the refund applicable under the Gateway Incentive program, a shipper, or its representative, must:

(1) Submit an application to the Manager for the proposed movement (cargo/origin/destination) to be approved under the rules of the Gateway Incentive program;

(2) Supply to the Manager the information proving that the proposed movement is currently done via a competing gateway;

(3) Negotiate with the Manager the terms of the proposal, that is an applicable toll reduction, a volume commitment, and the duration of the proposal.

(c) The shipper, or its representative, will qualify annually for the negotiated toll reduction upon completion of the annual volume commitment during the agreed upon duration period.

(d) The Gateway Incentive applies only to movements of qualified cargoes done after the commencement date of the qualified Gateway Incentive. Movements done prior to the date of commencement of the Gateway Incentive will be ineligible for the rebate.

(e) The shipper, or its representative, will provide the Manager with a request for the Gateway Incentive refund, together with copies of any documents required to support the request, within sixty (60 days) of the close of the navigation season. Requests for refunds should be submitted to the Manager, Revenue and Forecast, who will be responsible for reviewing all documents

and data and recommending the refund under the Gateway Incentive.

(f) The negotiated Gateway Incentive percentage of tolls reduction paid in respect of qualifying cargo shipped will be refunded by the Manager after the close of the navigation season, once the Manager has confirmed through the review of submitted support documents that the shipper has met the volume commitment. The SLSMC reserves the right to require the ultimate origin and destination of cargoes to validate the commitment.

■ 6. Revise paragraph (a) of the redesignated § 402.10 to read as follows:

§ 402.10 Post-clearance date operational surcharges.

(a) Subject to paragraph (b) of this section, a vessel that reports for its final transit of the Seaway from a place set out in column 1 of § 402.12 within a period after the clearance date established by the Manager and the Corporation set out in column 2 of § 402.12 shall pay operational surcharges in the amount set out in column 3 of § 402.12, prorated on a per-lock basis.

* * * * *

■ 7. Revise redesignated § 402.12 to read as follows:

§ 402.12 Schedule of tolls.

Column 1		Column 2	Column 3
Item	Description of charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
	(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time[1].	0.1061	0.1698.
	(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
	(*a*) bulk cargo	1.0997	0.7506.
	(*b*) general cargo	2.6498	1.2013.
	(*c*) steel slab	2.3981	0.8600.
	(*d*) containerized cargo	1.0997	0.7506.
	(*e*) government aid cargo	n/a	n/a.
	(*f*) grain	0.6756	0.7506.
	(*g*) coal	0.6756	0.7506.
	(3) a charge per passenger per lock	1.6476	1.6476.
	(4) a lockage charge per Gross Registered Ton of the vessel, as defined in tem 1(1), applicable whether the ship is wholly or partially laden, or is in ballast, for transit of the Welland Canal in either direction by cargo ships,	n/a	0.2827.
	Up to a maximum charge per vessel	n/a	3,955.
2	Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).	13 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).
3	Minimum charge per vessel per lock transited for full or partial transit of the Seaway.	[2] 27.46	27.46.
4	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes[3].	[4] 30.00	30.00.
5	Under the New Business Initiative Program, for cargo accepted as New Business, a percentage rebate on the applicable cargo charges for the approved period.	20%	20%.
6	Under the Volume Rebate Incentive program, a retroactive percentage rebate on cargo tolls on the incremental volume calculated based on the pre-approved maximum volume.	10%	10%.
7	Under the New Service Incentive Program, for New Business cargo moving under an approved new service, an additional percentage refund on applicable cargo tolls above the New Business rebate.	20%	20%.

[1] Or under the US GRT for vessels prescribed prior to 2002.

[2] The applicable charged under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)). The other charges are in Canadian dollars and are for the Canadian share of tolls.

[3] $5.00 discount per lock applicable on ticket purchased for Canadian locks via paypal.

[4] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock.

Issued at Washington, DC, on February 1, 2016.

Saint Lawrence Seaway Development Corporation.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2016–02169 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 7 and 9

[EPA–HQ–OA–2013–0031; FRL–9941–58–OA]

RIN 2090–AA39

Nondiscrimination in Programs or Activities Receiving Federal Assistance From the Environmental Protection Agency; Comment Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule titled ''Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency'' that was published in the **Federal Register** on December 14, 2015. This action extends the deadline for submitting written comments on the proposed rule. This extension provides an additional 30 days for the public to provide written comments.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OA–2013–0031, must be received on or before March 12, 2016.

ADDRESSES: Written comments may be submitted online through Docket ID No. EPA–HQ–OA–2013–0031, to the Federal eRulemaking Portal: *http://www.regulations.gov* or mailed to U.S. Environmental Protection Agency, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave. NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jeryl Covington or Lilian Dorka, U.S. Environmental Protection Agency, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave. NW., Washington, DC. 20460, telephone (202) 564–7272 or (202) 564–7713.

SUPPLEMENTARY INFORMATION: This document extends the public comment period for the proposed Nondiscrimination in Programs or Activities Receiving Federal Assistance from the EPA (80 FR 77284, December 14, 2015) in order to ensure that the public has sufficient time to review and comment on the proposal. That proposal provided for a public comment period ending February 12, 2016.

The EPA received several requests from the public to extend this comment period and this notice is the Agency's response to those persons who requested an extension of the comment period. In addition, EPA is providing notice that additional support documents are available for public inspection in the rulemaking docket. Finally, in response to significant public interest in the proposed rule, the Agency will conduct one additional public session in Washington, DC. Additional information on this announcement is located at *www.epa.gov/ocr.*

Dated: February 1, 2016.

Velveta Golightly-Howell,

Director, Office of Civil Rights.

[FR Doc. 2016–02589 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0756; FRL–9941–10–Region 9]

Approval of California Air Plan Revisions, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and oxides of nitrogen (NOx) emissions from gasoline dispensing facilities and stationary gas turbines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 10, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2015–0756 at *http://www.regulations.gov,* or via email to *Steckel.Andrew@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA. This proposal addresses local rules 2.22 and 2.34. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on a particular rule, we may adopt as final those rules that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 24, 2015.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–02422 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0784, FRL–9940–18–Region 9]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District; Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD or District) portion of the California State Implementation Plan (SIP). These revisions concern administrative and procedural requirements to obtain preconstruction permits which regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 10, 2016.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2015–0784, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ya-Ting (Sheila) Tsai, EPA Region IX, (415) 972–3328, *Tsai.Ya-Ting@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA. This proposal addresses the following local rules: 201, 203, 204, and 206. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on a particular rule, we may adopt as final those rules that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 3, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2016–02419 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2010–0682; FRL–9940–66–OAR]

RIN 2016–AS83

National Emission Standards for Hazardous Air Pollutant Emissions: Petroleum Refinery Sector Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2 regulations and the New Source Performance Standards (NSPS) for petroleum refineries, which were published on December 1, 2015. In that action, as a result of a risk and technology review, the Environmental Protection Agency (EPA) finalized amendments to Refinery MACT 1 and Refinery MACT 2. In this action, the EPA is proposing to amend the compliance date in Refinery MACT 1 for maintenance vent standards that apply during periods of startup, shutdown, maintenance or inspection for sources constructed or reconstructed on or before June 30, 2014. In this action, the EPA is also proposing to revise the compliance dates in Refinery MACT 2 for the standards that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCU) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014. These proposed revisions do not affect requirements that apply during normal operations. Finally, the EPA is proposing technical corrections and clarifications to the NESHAP and the NSPS for petroleum refineries. This action will have an insignificant effect on emissions reductions and costs.

DATES: Comments must be received on or before March 25, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0682, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA is seeking comment only on the issues specifically identified in this notice. The EPA will not respond to any comments addressing other aspects of the final rules or any other related rulemakings. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Instructions. All submissions must include the agency name and Docket ID No. EPA–HQ–OAR–2010–0682. The EPA's policy is that all comments received will be included in the public docket without change, and will be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0682. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information you claim as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI 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.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses.

Docket. All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. Visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm* for additional information about the EPA's public docket.

Public hearing. A public hearing will be held if requested by February 16, 2016 to accept oral comments on this proposed action. The hearing will be held, if requested, on February 24, 2016 at the EPA's North Carolina Campus located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. The hearing, if requested, will begin at 9:00 a.m. (local time) and will conclude at 1:00 p.m. (local time). To request a hearing, to register to speak at a hearing, or to inquire if a hearing will be held, please contact Ms. Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov.* The last day to pre-register to speak at a hearing, if one is held, will be February 22, 2016. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Please note that registration requests received before the hearing will be confirmed by the EPA via email.

Please note that any updates made to any aspect of the hearing, including whether or not a hearing will be held, will be posted online at *http://www3.epa.gov/airtoxics/petref.html.* We ask that you contact Ms. Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov* or monitor our Web site to determine if a hearing will be held. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates. Please go to *http://www3.epa.gov/airtoxics/petref.html* for more information on the public hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Shine, Sector Policies and Programs Division, Refining and Chemicals Group (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–3608; facsimile number: (919) 541–0246; and email address: *shine.brenda@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202)564–7027; facsimile number: (202)564–0050; and email address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
CEMS continuous emission monitoring system
COMS continuous opacity monitoring system
CPMS continuous parameter monitoring system
EPA Environmental Protection Agency
FCCU fluid catalytic cracking unit
HAP hazardous air pollutants
LEL lower explosive limit
NESHAP National Emissions Standards for Hazardous Air Pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance

OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PRA Paperwork Reduction Act
PSM Process Safety Management
RFA Regulatory Flexibility Act
RMP Risk Management Plan
SRU sulfur recovery unit
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act

Organization of this Document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Regulated Entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [a] Code
Petroleum Refining Industry	324110

[a] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source categories listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP or NSPS. If you have any questions regarding the applicability of any aspect of these NESHAP or NSPS, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the Internet through the Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at: *http://www.epa.gov/ttn/atw/petref.html.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same Web site.

II. Background Information

On December 1, 2015 (80 FR 75178), the EPA finalized amendments to the Petroleum Refinery NESHAP in 40 CFR part 63, subparts CC and UUU, referred to as Refinery MACT 1 and 2, respectively. The final amendments to Refinery MACT 1 and 2 include a number of provisions establishing emissions limitations during startup and shutdown for emissions sources at petroleum refineries, including specific provisions for maintenance vents, FCCU, and SRU, which are the focus of this proposed action.

The Refinery MACT 1 standards regulate emissions of hazardous air pollutants (HAP) from miscellaneous process vents. Prior to the December 2015 amendments, the definition of miscellaneous process vents excluded episodic or non-routine releases such as those associated with startup, shutdown, and maintenance. The December 2015 Refinery MACT 1 rule eliminates this exclusion from the definition of miscellaneous process vent and establishes standards for these ''maintenance vents'' in 40 CFR 63.643(c). Maintenance vents are only used as a result of startup, shutdown, maintenance or inspection of equipment when such equipment is emptied, depressurized, degassed, or placed into service. The rule specifies that refinery owners or operators may only release HAP from these maintenance vents in order to open process equipment provided that the equipment is drained and purged to a closed system until the hydrocarbon content is less than or equal to a lower explosive limit (LEL) of 10 percent prior to venting to the atmosphere. As a secondary limit, if the LEL cannot be measured due to design constraints of the equipment, the rule requires that the pressure in the equipment be reduced to 5 pounds (lbs) per square inch gauge or less prior to venting to the atmosphere. The rule also contains additional limits such as a low emission threshold (less than 72 lbs/day), and requirements for catalyst changeout activities where hydrotreater pyrophoric catalyst must be purged.

The Refinery MACT 2 standards regulate HAP emissions from the FCCU by specifying carbon monoxide (CO) limits as a surrogate for organic HAP and by specifying particulate matter (PM) limits (or nickel limits) as a surrogate for metal HAP. In the rule, compliance with the organic HAP emissions limit is demonstrated using a continuous CO monitor; compliance with the metal HAP emissions limit is demonstrated either using continuous opacity monitoring system (COMS) or continuous parameter monitoring system (CPMS). Owners or operators of FCCU are provided two options for demonstrating compliance with the PM limit during periods of startup, shutdown, or hot standby in 40 CFR 63.1564(a)(5): Meeting the emission limit that applies during times other than startup, shutdown, or hot standby, or meeting a minimum cyclone face velocity limit. Similarly, the rule provides two options for demonstrating compliance with the CO limit during periods of startup and shutdown in 40 CFR 63.1565(a)(5): Meeting the emission limit that applies during times other than startup, shutdown, or hot standby, or meeting an excess oxygen limit in the exhaust from the catalyst regenerator.

The Refinery MACT 2 standards also regulate HAP emissions from SRU vents by specifying sulfur dioxide (SO_2), reduced sulfur compound, or total reduced sulfur limits as a surrogate for SRU HAP emissions. In the rule, compliance with the SRU HAP emissions limit is demonstrated using a continuous emission monitoring system (CEMS) or, when a thermal incinerator/oxidizer is used, compliance with the SRU HAP emissions limits is demonstrated using CPMS. The rule removes previous requirements to operate according to a site-specific startup, shutdown, and malfunction plan and instead finalizes standards that apply during all times, including additional standards that apply during

startup and shutdown periods. Three compliance options were provided for SRU owners or operators to demonstrate compliance during periods of startup and shutdown in 40 CFR 63.1568(a)(4) including: Meeting the emission limit that applies during times other than startup or shutdown, sending purge gases to a flare that meets the operating requirements contained in 40 CFR 63.670, or sending purge gases to a thermal oxidizer or incinerator that meets specific temperature and excess oxygen requirements.

For owners or operators complying with any of the limits for startup, shutdown, or hot standby for FCCU and for startup or shutdown for SRU, the compliance date is the effective date of the rule (February 1, 2016, 60 days after the publication date of the rule). The compliance date for the maintenance vent provisions is also the effective date of the rule. In the next section of this preamble, we discuss some additional clarifications and technical corrections we are proposing to Table 11 of subpart CC to 40 CFR part 63, which is where the maintenance vent compliance times and other subpart CC compliance times are delineated.

The EPA has received new information that the compliance dates for standards for maintenance vents and startup, shutdown, or hot standby for FCCU and for startup or shutdown for SRU do not allow sufficient time to install additional control equipment, if needed, and to complete the management of change process, which includes addressing safety concerns associated with potential operational or procedural changes. The management of change process, which is discussed in further detail in the next section of this preamble, includes the following: Evaluating the change, forming an internal team to accomplish the change, engineering the change, which could include developing new set points, installing new controls or alarms, assessing risk of chemical accidents and catastrophic events, updating associated plans and procedures, providing training, performing pre-startup safety reviews, and implementing the change as required by other regulatory programs. In order to accommodate these steps, we are proposing to amend the compliance dates for these provisions to 18 months after the effective date of the standards (*i.e.,* August 1, 2017). These proposed revisions are limited to periods of maintenance, startup, and shutdown which are expected to occur relatively infrequently as compared to normal operations.

III. What actions are we proposing?

A. Compliance Dates for Standards Applicable to Maintenance Vents, FCCU and SRU During Startup and Shutdown and During Hot Standby for FCCU

The EPA has received additional information (see Docket ID No. EPA–HQ–OAR–2010–0682) that indicates that the compliance dates for standards for maintenance vents and periods of startup, shutdown, and hot standby for FCCU and for startup or shutdown for SRU do not provide facilities sufficient time to go through their management of change process, which includes addressing safety concerns associated with potential operational or procedural changes and coordinating any changes with other applicable regulatory requirements. The process equipment associated with maintenance vents, FCCU, and SRU are subject to requirements under the Risk Management Program regulation in 40 CFR part 68 and the Occupational Safety and Health Administration (OSHA) Process Safety Management (PSM) standard in 29 CFR part 1910. Thus, any operational or procedural changes resulting from complying with the applicable standards must follow the management of change procedures in these respective regulatory programs.

The Risk Management Program and OSHA PSM regulations provide that owners or operators follow a management of change process, as codified in 40 CFR 68.75, 29 CFR 1910.119(l) and appendix C of 29 CFR 1910.119, to ensure that the following are considered prior to making a change:

- The technical basis for the proposed change;
- Impact of change on safety and health;
- Modifications to operating procedures;
- Necessary time period for the change; and
- Authorization requirements for the proposed change.

As part of the management of change process, the EPA expects that facilities will have to perform an upfront assessment to determine what changes are required to meet the new maintenance vent requirements and standards for FCCU and SRU. Based on our review of information brought forward by industry representatives, refinery owners or operators may have to adjust or install new instrumentation, including alarms, closed drain headers, equipment blowdown drums, and other new or revised processes and controls in order to comply with these new provisions. Facilities may also have to hire a vendor to assist with the project and complete the procurement process. Additionally, we anticipate that facilities will have to assess risk of chemical accidents and catastrophic events and review and revise standard operating procedures, as necessary.

Further, the management of change provisions also require that employees who are involved in operating a process and maintenance and contract employees whose job tasks are affected by the change must be trained prior to startup of the affected process.

Finally, facilities are required to conduct pre-startup safety reviews and obtain authorization for use to fully implement and startup the modified process and/or equipment.

Therefore, to account for the applicable requirements in the Risk Management Program regulation and OSHA PSM standard, the EPA is proposing to require owners and operators of sources that were constructed or reconstructed on or before June 30, 2014, to comply with the maintenance vent provisions and limits for startup, shutdown, or hot standby for FCCU and for startup or shutdown for SRU no later than 18 months after the effective date of the December 2015 rule. We believe that this additional time is both appropriate and sufficient to accomplish the necessary compliance-related tasks discussed above.

Although not common, the possibility exists that some facilities may have to install new controls or otherwise invest in capital projects in order to comply with these new regulatory provisions. As provided in the General Provisions to part 63, owners or operators of these facilities can request an additional 12 months to comply with the standards using the provisions in 40 CFR 63.6(i).

Owners and operators must comply with the general duty requirements in 40 CFR 63.642(n) for maintenance vents and 40 CFR 63.1570 for FCCU or SRU during periods of startup, shutdown and, for FCCU only, hot standby from the effective date of the December 2015 final rule until they comply with the new requirements on or before the applicable compliance dates. Records of compliance with the general duty requirements must be maintained as specified in 40 CFR 63.643(d), 63.642(n) and 63.1570(c).

B. Clarifications and Technical Corrections

We are proposing to make clarifying revisions to Table 11 in 40 CFR part 63, subpart CC. We received numerous questions regarding the compliance date for maintenance vents and some owners or operators are interpreting Table 11 to

provide 3 years to comply with the maintenance vent provisions established in the rule as well as with other requirements that were not amended in the rule. This was not our intent, and we do not interpret Table 11 to allow 3 years to comply with the provisions in 40 CFR 63.643, or 3 years to comply with any of the requirements in subpart CC that were not amended in the December 2015 rule. However, in reviewing Table 11, we do understand the confusion, and we are proposing a revised version of Table 11 to more clearly delineate the compliance dates for the various provisions in subpart CC and to reflect the compliance date proposed for the maintenance vent provisions in the previous section of this preamble.

The EPA is also proposing to make several clarifications and technical corrections as described here and summarized in the table below. The first sentence in § 60.102a(f)(1)(i) is being changed to incorporate the pollutant of concern, SO_2, directly into the regulatory text rather than inside a parenthesis within the sentence for clarity. A grammatical correction is being made to the closed blowdown system definition in § 63.641 by adding an ''a'' before the phrase, ''. . . process vessel to a control device or back into the process.'' The term ''relief valve'' and ''valve'' are being replaced with ''pressure relief device'' and ''device'' in the force majeure event definition in §§ 63.641 and 63.670(o)(1)(ii)(B), respectively. These changes are being made to improve consistency in the use of the term ''pressure relief device'' as it pertains to the work practice requirements in § 63.648(j) and associated provisions. The list of exceptions for equipment leak requirements in § 63.648(a) is being expanded to ensure the intent of the rulemaking is clear, that pressure relief devices subject to the requirements in either 40 CFR part 60, subpart VV or part 63, subpart H and the requirements in 40 CFR part 63, subpart CC are to comply with the requirements in § 63.648(j)(1) and (2), instead of the pressure relief device requirements in 40 CFR part 60, subpart VV and 40 CFR part 63, subpart H. The reporting and recordkeeping requirements related to fenceline monitoring contained in § 63.655(h)(8) are being edited to provide clarity that compliance reports are due 45 days after the end of each reporting period. The term ''periodic'' in the context of the report for fenceline monitoring has been removed to avoid confusion concerning the due dates of other periodic reports contained in 40 CFR part 63, subpart CC such as those specified in § 63.655(g). The siting requirements for passive monitors near known sources of volatile organic compounds (VOC) contained in § 63.658(c)(1) are being edited to clarify that a monitor should be placed on the shoreline adjacent to the dock for marine vessel loading operations. The phrase ''that are located offshore'' was removed because the intent is to require a monitor on the shoreline adjacent to the dock for marine vessel loading operations, and is not dependent on whether the location of the marine vessel loading operation is onshore or offshore.

The EPA is also proposing to add language to clarify the effective dates of two specific provisions in 40 CFR part 63, subpart UUU. First, we are proposing to revise the catalytic reforming unit (CRU) pressure limit exclusion provision in 40 CFR 63.1566(a)(4) to specify that refiners have 3 years to comply with the requirements to meet emission limitations in Tables 15 and 16 if they actively purge or depressurize at vessel pressures of 5 psig or less. Although both the proposal and the final preambles (at 79 FR 36950 and 80 FR 75185) indicated that we intended to provide a 3-year compliance period, language in § 63.1566(a)(4) did not specifically provide 3 years. This was an inadvertent omission and in this action we are proposing to add rule language to reflect our intent.

Similarly, we are proposing to revise the entry for item 1 in Table 2 of subpart UUU to clarify that refineries have 18 months to comply with the 20 percent opacity operating limit for units subject to Refinery NSPS subpart J or electing to comply with Refinery NSPS subpart J provisions for PM. Although both the proposal and the final preambles (at 79 FR 36950 and 80 FR 75185) indicated that we intended to provide an 18-month compliance period for new or revised operating limits for FCCU, the language in Table 2 of subpart UUU did not specifically provide this 18 month compliance period. Again, this was an inadvertent omission and in this action we are proposing to add rule language to reflect our intent.

Additionally, the reference to § 60.102a(b)(1) in § 63.1564(a)(1)(iv) is being removed as this provision should only reference Option 2 in Table 1 (Item 7 in Table 1 of part 63, subpart UUU), providing owners or operators with the option to comply with the Refinery MACT 2 p.m. option when they choose not to comply with one of the NSPS options. A typographical correction is being made to the reference to § 63.1566(a)(5)(iii) in 40 CFR part 63, subpart UUU, Table 3, Item 12 to correctly reference § 63.1564(a)(5)(ii). Finally, an editorial correction is being made to add the word ''and'' in place of a semicolon in 40 CFR part 63, subpart UUU, Table 5, Item 2.

Provision	Proposed revision
§ 60.102a(f)(1)(i)	Add the phrase ''containing SO_2'' after ''. . . the discharge of any gases . . .'' in the first sentence of this paragraph. Remove ''(SO_2)'' in the first sentence of this paragraph.
§ 63.641 *Closed blowdown system* definition	Add the word ''a'' before the phrase, ''. . . process vessel to a control device or back into the process.''
§ 63.641 *Force majeure event* definition	Change ''relief valve'' to ''pressure relief device.''
§ 63.648(a)	Edit the list of exceptions to include paragraphs (j)(1) and (2) of this section.
§ 63.655(h)(8)	Remove the word ''periodic'' and edit to require submittal within 45 days after the end of each reporting period.
§ 63.658(c)(1)	Delete the phrase ''that are located offshore.''
§ 63.670(o)(1)(ii)(B)	Change the word ''valve'' to ''device.''
§ 63.1564(a)(1)(iv)	Remove the reference to § 60.102a(b)(1).
§ 63.1566 (a)(4)	Revise the paragraph to allow 3 years to comply with Tables 15 and 16 for active depressuring and purging, when the reactor vent pressure is 5 psig or less.
40 CFR part 63, subpart UUU, Table 2, Item 1	Add specific text to clarify that the 20 percent opacity operating limit becomes effective ''On and after August 1, 2017. . . .''
40 CFR part 63, subpart UUU, Table 3, Item 12	Correct the citation to § 63.1564(a)(5)(ii).
40 CFR part 63, subpart UUU, Table 5, Item 2	Replace the second semicolon with the word ''and.''

C. Impacts

We expect the additional compliance time will have an insignificant effect on emission reductions and costs, as many refiners already have measures in place due to state and other federal requirements to minimize emissions during these periods. Further, these periods are relatively infrequent (some only occur on a 5-year cycle) and are usually of short duration.

IV. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 63, subparts CC and UUU under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0340 and 2060–0554. The proposed amendments are revisions to compliance dates, clarifications and technical corrections that do not affect the estimated burden of the existing rule. Therefore, we have not revised the information collection request for the existing rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The action consists of revisions to compliance dates, clarifications, and technical corrections which do not change the expected economic impact analysis performed for the existing rule. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed amendments serve to revise compliance dates and make technical clarifications and corrections. We expect the additional compliance time will have an insignificant effect on emission reductions as many refiners already have measures in place due to state and other federal requirements to minimize emissions during these periods. Further, these periods are relatively infrequent and are usually of short duration. Therefore, the proposed amendments should not appreciably increase risk for any populations. Further, this action will allow more time for refiners to implement procedures to safely start up and shut down equipment which should minimize safety risks for all populations.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. The proposed amendments serve to revise compliance dates and make technical clarifications and corrections. We expect the additional compliance time will have an insignificant effect on emission reductions as many refiners already have measures in place due to state and other federal requirements to minimize emissions during these periods. Further, these periods are relatively infrequent and are usually of short duration. Therefore, the proposed amendments should not appreciably increase risk for any populations. Further, this action will allow more time for refiners to implement procedures to safely start up and shut down equipment which should minimize safety risks for all populations.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 29, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code

of Federal Regulations is proposed to be amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

■ 2. Section 60.102a is amended by revising the first sentence of paragraph (f)(1)(i) to read as follows:

§ 60.102a Emissions limitations.

* * * * *

(f) * * *

(1) * * *

(i) For a sulfur recovery plant with an oxidation control system or a reduction control system followed by incineration, the owner or operator shall not discharge or cause the discharge of any gases containing SO_2 into the atmosphere in excess of the emission limit calculated using Equation 1 of this section. * * *

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 3. The authority citation for part 63 continues to read as follows:

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

Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

■ 4. Section 63.641 is amended by revising the definitions of ''Closed blowdown system'' and ''Force majeure event'' to read as follows:

§ 63.641 Definitions.

* * * * *

Closed blowdown system means a system used for depressuring process vessels that is not open to the atmosphere and is configured of piping, ductwork, connections, accumulators/knockout drums, and, if necessary, flow inducing devices that transport gas or vapor from a process vessel to a control device or back into the process.

* * * * *

Force majeure event means a release of HAP, either directly to the atmosphere from a pressure relief device or discharged via a flare, that is demonstrated to the satisfaction of the Administrator to result from an event beyond the refinery owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the refinery (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the refinery that impacts the refinery's ability to operate.

* * * * *

■ 5. Section 63.643 is amended by revising paragraph (c) introductory text and adding paragraph (d) to read as follows:

§ 63.643 Miscellaneous process vent provisions.

* * * * *

(c) An owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed or placed into service. The owner or operator does not need to designate a maintenance vent as a Group 1 or Group 2 miscellaneous process vent. The owner of operator must comply with the applicable requirements in paragraphs (c)(1) through (3) of this section for each maintenance vent according to the compliance dates specified in table 11 of this subpart, unless an extension is requested in accordance with the provisions in § 63.6(i).

* * * * *

(d) After February 1, 2016 and prior to the date of compliance with the maintenance vent provisions in paragraph (c) of this section, the owner or operator must comply with the requirements in § 63.642(n) for each maintenance venting event and maintain records necessary to demonstrate compliance with the requirements in § 63.642(n) including, if appropriate, records of existing standard site procedures used to deinventory equipment for safety purposes.

■ 6. Section 63.648 is amended by revising paragraph (a) introductory text as follows:

§ 63.648 Equipment leak standards.

(a) Each owner or operator of an existing source subject to the provisions of this subpart shall comply with the provisions of 40 CFR part 60, subpart VV, and paragraph (b) of this section except as provided in paragraphs (a)(1) and (2), (c) through (i), and (j)(1) and (2) of this section. Each owner or operator of a new source subject to the provisions of this subpart shall comply with subpart H of this part except as provided in paragraphs (c) through (i) and (j)(1) and (2) of this section.

* * * * *

■ 7. Section 63.655 is amended by revising paragraph (h)(8) introductory text to read as follows:

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(h) * * *

(8) For fenceline monitoring systems subject to § 63.658, within 45 calendar days after the end of each reporting period, each owner or operator shall submit the following information to the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The owner or operator need not transmit these data prior to obtaining 12 months of data.

* * * * *

■ 8. Section 63.658 is amended by revising paragraph (c)(1) to read as follows:

§ 63.658 Fenceline monitoring provisions.

* * * * *

(c) * * *

(1) As it pertains to this subpart, known sources of VOCs, as used in Section 8.2.1.3 in Method 325A of appendix A of this part for siting passive monitors, means a wastewater treatment unit, process unit, or any emission source requiring control according to the requirements of this subpart, including marine vessel loading operations. For marine vessel loading operations, one passive monitor should be sited on the shoreline adjacent to the dock.

* * * * *

■ 9. Section 63.670 is amended by revising paragraph (o)(1)(ii)(B) to read as follows:

§ 63.670 Requirements for flare control devices.

* * * * *

(o) * * *

(1) * * *

(ii) * * *

(B) Implementation of prevention measures listed for pressure relief devices in § 63.648(j)(5) for each pressure relief device that can discharge to the flare.

* * * * *

■ 10. The appendix to subpart CC is amended by revising table 11 to read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 11—COMPLIANCE DATES AND REQUIREMENTS

If the construction/reconstruction date is . . .	Then the owner or operator must comply with . . .	And the owner or operator must achieve compliance . . .	Except as provided in . . .
(1) After June 30, 2014	(i) Requirements for new sources in §§ 63.643(a) and (b); 63.644, 63.645, and 63.647; 63.648(a) through (i) and (j)(1) and (2); 63.649 through 63.651; and 63.654 through 63.656.	Upon initial startup	§ 63.640(k), (l) and (m).
	(ii) Requirements for new sources in §§ 63.642(n), 63.643(c), 63.648(j)(3), (6) and (7); and 63.657 through 63.660.	Upon initial startup or February 1, 2016, whichever is later.	§ 63.640(k), (l) and (m).
(2) After September 4, 2007 but on or before June 30, 2014.	(i) Requirements for new sources in §§ 63.643(a) and (b); 63.644, 63.645, and 63.647; 63.648(a) through (i) and (j)(1) and (2); and 63.649 through 63.651, 63.655 and 63.656.	Upon initial startup	§ 63.640(k), (l) and (m).
	(ii) Requirements for new sources in § 63.654.	Upon initial startup or October 28, 2009, whichever is later.	§ 63.640(k), (l) and (m).
	(iii) Requirements for new sources in either § 63.646 or § 63.660.	Upon initial startup, but you must transition to comply with only the requirements in § 63.660 on or before April 29, 2016.	§§ 63.640(k), (l) and (m) and 63.660(d).
	(iv) Requirements for existing sources in § 63.643(c).	On or before August 1, 2017	§§ 63.640(k), (l) and (m) and 63.643(d).
	(v) Requirements for existing sources in § 63.658.	On or before January 30, 2018	§ 63.640(k), (l) and (m).
	(vi) Requirements for existing sources in § 63.648 (j)(3), (6) and (7) and § 63.657.	On or before January 30, 2019	§ 63.640(k), (l) and (m).
	(vii) Requirements in § 63.642(n)	Upon initial startup or February 1, 2016, whichever is later.	
(3) After July 14, 1994 but on or before September 4, 2007.	(i) Requirements for new sources in §§ 63.643(a) and (b); 63.644, 63.645, and 63.647; 63.648(a) through (i) and (j)(1) and (2); and 63.649 through 63.651, 63.655 and 63.656.	Upon initial startup or August 18, 1995, whichever is later.	§ 63.640(k), (l) and (m).
	(ii) Requirements for existing sources in § 63.654.	On or before October 29, 2012	§ 63.640(k), (l) and (m).
	(iii) Requirements for new sources in either § 63.646 or § 63.660.	Upon initial startup, but you must transition to comply with only the requirements in § 63.660 on or before April 29, 2016.	§§ 63.640(k), (l) and (m) and 63.660(d).
	(iv) Requirements for existing sources in § 63.643(c).	On or before August 1, 2017	§§ 63.640(k), (l) and (m) and 63.643(d).
	(v) Requirements for existing sources in § 63.658.	On or before January 30, 2018	§ 63.640(k), (l) and (m).
	(vi) Requirements for existing sources in §§ 63.648(j)(3), (6) and (7) and 63.657.	On or before January 30, 2019	§ 63.640(k), (l) and (m).
	(vii) Requirements in § 63.642(n)	Upon initial startup or February 1, 2016, whichever is later.	
(4) On or before July 14, 1994	(i) Requirements for existing sources in §§ 63.648(a) through (i) and (j)(1) and (2); and 63.649, 63.655 and 63.656.	(a) On or before August 18, 1998	(*1*) § 63.640(k), (l) and (m). (*2*) § 63.6(c)(5) or unless an extension has been granted by the Administrator as provided in § 63.6(i).
	(ii) Either the requirements for existing sources in §§ 63.643(a) and (b); 63.644, 63.645, 63.647, 63.650 and 63.651; and item (4)(v) of this table. OR ..... The requirements in §§ 63.652 and 63.653.	(a) On or before August 18, 1998	(*1*) § 63.640(k), (l) and (m). (*2*) § 63.6(c)(5) or unless an extension has been granted by the Administrator as provided in § 63.6(i).
	(iii) Requirements for existing sources in either § 63.646 or § 63.660.	On or before August 18, 1998, but you must transition to comply with only the requirements in § 63.660 on or before April 29, 2016.	§§ 63.640(k), (l) and (m) and 63.660(d).

TABLE 11—COMPLIANCE DATES AND REQUIREMENTS—Continued

If the construction/reconstruction date is . . .	Then the owner or operator must comply with . . .	And the owner or operator must achieve compliance . . .	Except as provided in . . .
	(iv) Requirements for existing sources in § 63.654.	On or before October 29, 2012	§ 63.640(k), (l) and (m).
	(v) Requirements for existing sources in § 63.643(c).	On or before August 1, 2017	§§ 63.640(k), (l) and (m) and 63.643(d).
	(vi) Requirements for existing sources in § 63.658.	On or before January 30, 2018	§ 63.640(k), (l) and (m).
	(vii) Requirements for existing sources in §§ 63.648(j)(3), (6) and (7) and 63.657.	On or before January 30, 2019	§ 63.640(k), (l) and (m).
	(viii) Requirements in § 63.642(n)	Upon initial startup or February 1, 2016, whichever is later.	

* * * * *

Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

■ 11. Section 63.1563 is amended by:
■ a. Revising paragraphs (a)(1) and (2) and (b);
■ b. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively;
■ c. Adding paragraph (d); and
■ d. Revising newly redesignated paragraph (e) introductory text.

The revisions and additions to read as follows:

§ 63.1563 When do I have to comply with this subpart?

(a) * * *

(1) If you startup your affected source before April 11, 2002, then you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart no later than April 11, 2002 except as provided in paragraph (d) of this section.

(2) If you startup your affected source after April 11, 2002, you must comply with the emission limitations and work practice standards for new and reconstructed sources in this subpart upon startup of your affected source except as provided in paragraph (d) of this section.

(b) If you have an existing affected source, you must comply with the emission limitations and work practice standards for existing affected sources in this subpart by no later than April 11, 2005 except as specified in paragraphs (c) and (d) of this section.

* * * * *

(d) You must comply with the applicable requirements in §§ 63.1564(a)(5), 63.1565(a)(5) and 63.1568(a)(4) as specified in paragraph (d)(1) or (2), as applicable.

(1) For sources which commenced construction or reconstruction before June 30, 2014, you must comply with the applicable requirements in §§ 63.1564(a)(5), 63.1565(a)(5) and 63.1568(a)(4) on or before August 1, 2017 unless an extension is requested and approved in accordance with the provisions in § 63.6(i). After February 1, 2016 and prior to the date of compliance with the provisions in §§ 63.1564(a)(5), 63.1565(a)(5) and 63.1568(a)(4), you must comply with the requirements in § 63.1570(c) and (d).

(2) For sources which commenced construction or reconstruction on or after June 30, 2014, you must comply with the applicable requirements in §§ 63.1564(a)(5), 63.1565(a)(5) and 63.1568(a)(4) on or before February 1, 2016 or upon startup, whichever is later.

(e) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the requirements in paragraphs (e)(1) and (2) of this section apply.

* * * * *

■ 12. Section 63.1564 is amended by revising paragraphs (a)(1)(iv), (a)(5) introductory text and (c)(5) introductory text to read as follows:

§ 63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?

(a) * * *

(1) * * *

(iv) You can elect to comply with the PM per coke burn-off emission limit of this chapter (Option 2);

* * * * *

(5) On or before the date specified in § 63.1563(d), you must comply with one of the two options in paragraphs (a)(5)(i) and (ii) of this section during periods of startup, shutdown and hot standby:

* * * * *

(c) * * *

(5) If you elect to comply with the alternative limit in paragraph (a)(5)(ii) of this section during periods of startup, shutdown and hot standby, demonstrate continuous compliance on or before the date specified in § 63.1563(d) by:

* * * * *

■ 13. Section 63.1565 is amended by revising paragraph (a)(5) introductory text to read as follows:

§ 63.1565 What are my requirements for organic HAP emissions from catalytic cracking units?

(a) * * *

(5) On or before the date specified in § 63.1563(d), you must comply with one of the two options in paragraphs (a)(5)(i) and (ii) of this section during periods of startup, shutdown and hot standby:

* * * * *

■ 14. Section 63.1566 is amended by revising paragraph (a)(4) to read as follows:

§ 63.1566 What are my requirements for organic HAP emissions from catalytic reforming units?

(a) * * *

(4) The emission limitations in Tables 15 and 16 of this subpart do not apply to emissions from process vents during passive depressuring when the reactor vent pressure is 5 pounds per square inch gauge (psig) or less or during active depressuring or purging prior to January 30, 2019, when the reactor vent pressure is 5 psig or less. On and after January 30, 2019, the emission limitations in Tables 15 and 16 of this subpart do apply to emissions from process vents during active purging operations (when nitrogen or other purge gas is actively introduced to the reactor vessel) or active depressuring (using a vacuum pump, ejector system, or similar device) regardless of the reactor vent pressure.

* * * * *

■ 15. Section 63.1568 is amended by revising paragraph (a)(4) introductory text to read as follows:

§ 63.1568 What are my requirements for organic HAP emissions from sulfur recovery units?

(a) * * *

(4) On or before the date specified in § 63.1563(d), you must comply with one of the three options in paragraphs (a)(4)(i) through (iii) of this section during periods of startup and shutdown.

* * * * *

■ 16. Table 2 to subpart UUU of part 63 is amended by revising the entry for item 1 to read as follows:

* * * * *

TABLE 2 TO SUBPART UUU OF PART 63—OPERATING LIMITS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

* * * * * * *

For each new or existing catalytic cracking unit . . .	For this type of continuous monitoring system . . .	For this type of control device . . .	You shall meet this operating limit . . .
1. Subject to the NSPS for PM in 40 CFR 60.102 and not elect § 60.100(e).	Continuous opacity monitoring system.	Any	On and after August 1, 2017, maintain the 3-hour rolling average opacity of emissions from your catalyst regenerator vent no higher than 20 percent.

* * * * * * *

* * * * *

■ 17. Table 3 to subpart UUU of part 63 is amended by revising the entry for item 12 to read as follows:

* * * * *

TABLE 3 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

* * * * * * *

For each new or existing catalytic cracking unit . . .	If you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
12. Electing to comply with the operating limits in § 63.1564(a)(5)(ii) during periods of start-up, shutdown, or hot standby.	Any	Continuous parameter monitoring system to measure and record the gas flow rate exiting the catalyst regenerator.[1]

[1] If applicable, you can use the alternative in § 63.1573(a)(1) instead of a continuous parameter monitoring system for gas flow rate.

* * * * *

■ 18. Table 5 to subpart UUU of part 63 is amended by revising the entry for item 2 to read as follows:

* * * * *

TABLE 5 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

* * * * * * *

For each new and existing catalytic cracking unit catalyst regenerator vent . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
2. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(i); or in § 60.102 and electing § 60.100(e) and electing to meet the PM per coke burn-off limit.	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off.	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 1.0 g/kg (1.0 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. As part of your Notification of Compliance Status, you certify that your BLD; CO_2, O_2, or CO monitor; or continuous opacity monitoring system meets the requirements in § 63.1572.

* * * * * * *

[FR Doc. 2016–02306 Filed 2–8–16; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2015–0309; FRL–9941–81–OAR]

RIN 2060–AS68

Protection of Stratospheric Ozone: Revisions to Reporting and Recordkeeping for Imports and Exports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make minor conforming edits to the stratospheric protection regulations to implement the International Trade Data System. In the ''Rules and Regulations'' section of this **Federal Register**, we are making these edits as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule. This system allows businesses to transmit the transactional data required by multiple Federal agencies for the import and export of cargo through a single ''window.'' As businesses currently must submit trade data to multiple agencies, in multiple ways, and often on paper, the transition to electronic filing is expected to save businesses time and money. Specifically, this rulemaking would remove the requirement that the petition for used ozone-depleting substances accompany the shipment through U.S. Customs and remove references to Customs forms that are obsolete under the new system.

DATES: Written comments must be received by March 10, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0309, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone: (202) 343–9055; or by email: *arling.jeremy@epa.gov.* You may also visit the EPA's Ozone Protection Web site at *www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Why is EPA issuing this proposed rule?

This document proposes to make minor conforming edits to the stratospheric protection regulations to implement the International Trade Data System primarily by removing references to specific Customs forms that will become obsolete under the new system. EPA has published a direct final rule making these edits in the ''Rules and Regulations'' section of this **Federal Register**. We view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. For additional information on the action being taken, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

B. Does this action apply to me?

This rulemaking may affect the following categories: Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gas manufacturers, importers, and exporters; Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), including chemical gases and compressed gases merchant importers and exporters; and refrigerant reclaimers or other such entities that might import virgin, recovered, or reclaimed refrigerant gas.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA because the requirements to maintain entry numbers and EINs are a subset of the previous requirements to maintain forms containing this information. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0170 and 2060–0438.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small

entities subject to the rule. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This rulemaking does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose any enforceable duties on communities of Indian tribal governments. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of protection provided to human health or the environment. This action makes minor changes to recordkeeping and reporting requirements to remove references to U.S. Customs forms and other small edits.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Imports, Ozone, Reporting and recordkeeping requirements.

Dated: January 21, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. In § 82.3, revise the definition for ''Importer'' to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Importer means any person who imports a controlled substance or a controlled product into the United States. ''Importer'' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee;

(2) The importer of record;

(3) The actual owner; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

* * * * *

■ 3. In § 82.13, revise paragraphs (g)(1)(xii), (g)(3)(v), and (g)(3)(viii)(D) to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(g) * * *

(1) * * *

(xii) The U.S. Customs entry number;

* * * * *

(3) * * *

(v) To pass the approved used class I controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

* * * * *

(viii) * * *

(D) The U.S. Customs entry number.

* * * * *

■ 4. In § 82.24, revise paragraphs (c)(2)(xiii), (c)(4)(v), (c)(4)(viii)(D), (d)(2)(i), and (d)(3)(i) to read as follows:

§ 82.24 Recordkeeping and reporting requirements for class II controlled substances.

* * * * *

(c) * * *

(2) * * *

(xiii) The U.S. Customs entry number;

* * * * *

(4) * * *

(v) To pass the approved used class II controlled substances through U.S. Customs, the non-objection notice issued by EPA must accompany the shipment through U.S. Customs.

* * * * *

(viii) * * *

(D) The U.S. Customs entry number.

* * * * *

(d) * * *

(2) * * *

(i) The Employer Identification Number of the shipper or their agent;

* * * * *

(3) * * *

(i) The Employer Identification Number of the shipper or their agent; and

* * * * *

■ 5. In § 82.104, revise paragraph (m)(2) to read as follows:

§ 82.104 Definitions.

* * * * *

(m) * * *

(2) The importer of record;

* * * * *

[FR Doc. 2016–02320 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0742; FRL–9941–42]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces EPA's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 10, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0742, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. 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.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, EPA seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

PP 5E8397. Interregional Research Project Number 4 (IR–4), Rutgers University, 500 College Rd. East, Suite 201W, Princeton, NJ 08540, requests to establish a temporary exemption from the requirement of a tolerance for residues of the microbial pesticides *Aspergillus flavus* strains TC16F, TC35C, TC38B and TC46G in or on corn. The petitioner believes no analytical method is needed because it is seeking to establish a temporary exemption from the requirement of a tolerance.

Authority: 21 U.S.C. 346a.

Dated: January 21, 2016.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–02570 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9936–88–Region 8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the California Gulch Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete the Operable Unit 1 (OU1) Yak Tunnel/Water Treatment Plant; and Operable Unit 3 (OU3), Denver & Rio Grande Western Railroad Company (D&RGW) Slag Piles/Railroad Easement/Railroad Yard, of the California Gulch Superfund Site (Site), located in Lake County, Colorado, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and the Environment, have determined that all appropriate response actions at OU1 and OU3 under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by *March 10, 2016.*

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by mail to Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6689, email: *kiefer.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for all of OU1 and OU3 of the California Gulch Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

This partial deletion pertains to all of OU1 and OU3. Operable Unit 2 (OU2), Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing; Operable Unit 4 (OU4) Upper California Gulch; Operable Unit 5 (OU5), ASARCO Smelters/Slag/Mill Sites; Operable Unit 7 (OU7), Apache Tailing Impoundment; Operable Unit 8 (OU8), Lower California Gulch; Operable Unit 9 (OU9), Residential Populated Areas; and Operable Unit 10 (OU10), Oregon Gulch, were previously deleted from the NPL. Operable Unit 6 (OU6), Starr Ditch/Stray Horse Gulch/Lower Evans Gulch/Penrose Mine Waste Pile; Operable Unit 11 (OU11), Arkansas River Floodplain; and Operable Unit 12 (OU12), Site-wide Surface and Groundwater Quality, are not being considered for deletion as part of this action and will remain on the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p.306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Dated: January 15, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2016–02599 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 26
Tuesday, February 9, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0058]

Highly Pathogenic Avian Influenza; Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a final environmental assessment and finding of no significant impact relative to a national approach for the control of highly pathogenic avian influenza outbreaks within the United States. Based on the environmental assessment and our review of all public comments received, we have concluded that such an approach will not have a significant impact on the quality of the human environment.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Miller, PE, Senior Staff Officer and Environmental Engineer, APHIS Veterinary Services, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 851–3512. Copies of the final EA and FONSI may be obtained by contacting Ms. Michelle Gray, Environmental Protection Specialist, ERAS/PPD/APHIS, 4700 River Road Unit 149, Riverdale, MD 20737; (301) 851–3146.

SUPPLEMENTARY INFORMATION: Highly pathogenic avian influenza (HPAI) is a significant and often fatal zoonotic disease of poultry. In December 2014, two H5 viruses of HPAI were discovered in the United States. These viruses were subsequently detected in both migratory waterfowl and domestic poultry and significantly affected domestic poultry production within the United States. Two poultry production sectors, commercial meat turkeys and laying chickens, were heavily impacted by the disease, resulting in the loss or destruction of over 48 million birds between December 2014 and June 2015.

Disease eradication efforts, northern migration of wild waterfowl, and the natural disinfecting effect of summer heat have largely halted the spread of the disease within the United States. However, subsequent migrations of potentially infected wild waterfowl could precipitate a new round of outbreaks requiring additional actions by the Animal and Plant Health Inspection Service (APHIS) to control them.

On September 4, 2015, we published in the **Federal Register** (80 FR 53485, Docket No. APHIS–2015–0058) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA), titled ''High Pathogenicity Avian Influenza Control in Commercial Poultry Operations—A National Approach,'' and finding of no significant impact (FONSI) relative to a national approach for the control of HPAI outbreaks within the United States.

The EA recommends an approach in which APHIS uses its centralized management of carcass disposal activities to ensure consistency in responses to HPAI outbreaks throughout the United States. Under this approach, APHIS provides information and other support to State and local authorities to help them determine which depopulation, disposal, and cleaning and disinfection methods are most appropriate for the situation.

We solicited comments for 30 days ending October 5, 2015. We received 3 comments by that date, from national animal welfare organizations and a member of the public. We carefully considered the comments we received on the EA and determined that none raise issues that APHIS had not already considered. Accordingly, APHIS has decided to implement this approach and concluded that it will not have a significant impact on the quality of the human environment. The comments we received are addressed in an appendix to the final EA.

[1] To view the notice, final EA, FONSI, and comments, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0058.*

The final EA and FONSI may be viewed on the Regulations.gov Web site (see footnote 1). Copies are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead to (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 3rd day of February 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–02526 Filed 2–8–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by April 11, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Avenue SW., STOP

1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435. Email: *Thomas.Dickson@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Avenue SW., Washington, DC 20250–1522, FAX: (202) 720–8435.

Title: Request for Release of Lien and/or Approval of Sale, RUS Form 793.

OMB Control Number: 0572–0041.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, *e.g.,* the RUS mortgage, limit the rights of a RUS borrower to dispose of capital assets.

The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows telecommunications program borrowers to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.75 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 110.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660, FAX (202) 720–8435 or email: *rebecca.hunt@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 3, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–02523 Filed 2–8–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Dakota Advisory Committee to the Commission will convene at 12:00 p.m. (MST) on Friday, February 26, 2016, via teleconference. The purpose of the meeting is to review and discuss current civil rights issues in the state, and potential next topics of study by the committee.

Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–417–8465; Conference ID: 6984210. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–888–417–8465, Conference ID: 6984210. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, March 28, 2016. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://www.facadatabase.gov/committee/meetings.aspx?cid=274* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Introductions

Richard Braunstein, Chair, South Dakota Advisory Committee

Malee V. Craft, Regional Director, Rocky Mountain Regional Office (RMRO)

- Discussion of civil rights issues in the state to select topic for future study
- Next Steps

DATES: Friday, February 26, 2016, at 12:00 p.m. (MST)

ADDRESSES: To be held via teleconference: Conference Call Toll-Free Number: 1 –888–417–8465, Conference ID: 6984210. TDD: Dial Federal Relay Service 1 –800–977–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Malee V. Craft, DFO, *mcraft@usccr.gov,* 303–866–1040.

Dated: February 4, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–02543 Filed 2–8–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

National Sunshine Week Public Event

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public event.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is announcing the following event, ''Celebrating Openness,'' in recognition of National Sunshine Week. In recognizing the 50th Anniversary of the Freedom of Information Act (FOIA) and as part of its efforts to promote the goals of open government, the Census Bureau will hold public workshops describing the components of our Open Government Plan.

DATES: The public workshops will be held on Wednesday, March 16 and Thursday, March 17, 2016, from 9:30 a.m. to 3:30 p.m. The Census Bureau also will co-host a kick-off event with the Department of Commerce (DOC) on March 15, 2016, in the DOC Auditorium. Additional information will follow on the DOC event.

ADDRESSES: The public workshops will be held at the U.S. Census Bureau Training Rooms, T–4 and T–5, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: William Savino or Karen Bronson at the Freedom of Information Act and Open Government Office, by telephone (301) 763–2127, by email at *census.efoia@census.gov,* or by postal mail addressed to: U.S. Census Bureau, Policy Coordination Office, Freedom of Information Act and Open Government Branch, Room 8H027, 4600 Silver Hill Road, Washington, DC 20233.

For TTY callers, please call the Federal Relay Service (FRS) at 1–800–877–8339 and give them the above-listed number you would like to call. This service is free and confidential.

SUPPLEMENTARY INFORMATION: The workshops will begin promptly at 9:30 a.m. and end at 3:30 p.m. The agenda will be available a week before the event on the Census Bureau Web site, *http://www.census.gov/.* Registration is free, but advanced registration is required. Send an email to *census.efoia@census.gov* to register. Please include ''Sunshine Week Workshops Registration'' in the subject line.

The workshops will translate the tenants of open government by detailing how those tenants are operationalized and advanced in our Open Government Plan. Members of the public who are unable to attend in person but wish to participate in the workshops will be provided call-in instructions upon registration. There will be an opportunity for questions and answers following each presentation. The workshops will include topics such as FOIA, Privacy, Open Data, Web site, and Records Management.

The event will be physically accessible to people with disabilities. Individuals requiring accommodations such as sign language interpretation or other auxiliary aids should call Iris Boon at (301) 763–2127 to request accommodations at least five business days in advance.

All registrants will be placed on a visitor's list. All visitors for the event must provide government-issued photo identification in order to enter the building and receive a visitor's badge. For logistical questions, call Nicole Alexander at (301) 763–2127.

Media interested in attending should call the Census Bureau's Public Information Office at (301) 763–3030.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–02525 Filed 2–8–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a teleconference meeting on Thursday, February 18, 2016, 2:00–2:45 p.m. Eastern Standard Time (EST) and will be open to the public. During this time, members will discuss and vote on the Capital Continuum Exchange proposal. If approved, the recommendation will be presented to the Secretary in March. The meeting will take place via teleconference.

DATES: Thursday, February 18, 2016. Time: 2:00–2:45 p.m. Eastern Standard Time.

ADDRESSES: N/A. Teleconference: Dial-In: 1–800–593–8978, Passcode: 5807298.

FOR FURTHER INFORMATION CONTACT: Julie Lenzer, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Avenue NW., Washington, DC 20230; email: *NACIE@doc.gov;* telephone: 202–482–8001; fax: 202–273–4781. Please reference ''NACIE February 18th Meeting'' in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: The Council was chartered on November 10, 2009 to advise the Secretary of Commerce on matters related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this meeting is to discuss the Council's planned work initiatives in three focus areas: workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Those unable to attend the meetings in person but wishing to listen to the proceedings can do so through a conference call line 1–800–593–8978, passcode: 5807298. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: February 2, 2016.

Julie Lenzer,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2016–02427 Filed 2–8–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota, et al.; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Docket Number: 15–041. Applicant: University of Minnesota, Minneapolis, MN 55455–0149. Instrument: IVVI Measuring System with Modules. Manufacturer: Delft University of Technology, the Netherlands. Intended Use: See notice at 80 FR 65984–85, October 28, 2015. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to uncover novel quantum properties of certain semiconductors or superconductors, such as InAs, GaSb or devices combining these with superconductors such As Al and Nb, using high-sensitivity electronic current and voltage measurements. Unique properties of this instrument include modular integration of pA sensitivity ammeter, required to measure very small electrical currents down to several pA, low-noise transimpedance amplifier, required to transform the electrical currents into voltage signals of a few mV that can be measured with conventional laboratory voltmeters, and low-noise digital-to-analogue converter and signal switchboxes. The entire setup is battery-operated and is programmable via an optically-decoupled input to minimize electrical noise interference from electrical power lines or other instruments.

Docket Number: 15–042. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: SuperK EXTREME EXR–20 20 MHz with SuperK VARIA High 50dB with Power Lock. Manufacturer: NKT Photonics, Denmark. Intended Use: See notice at 80 FR 65984–85, October 28, 2015. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to image tissue or tissue like materials with high optical scatter using Optical Diffusion Tomography (ODT), providing useful information for the study of biological and chemical processes. The instrument has a wide turning range, which is important for exciting different fluorophores of interest, providing specificity to chemical processes, a short pulse width which is important for performing time-gated measurements, high laser power which is important for obtaining a high SNR from laser light traveling through centimeters of tissue or related scattering medium, and a 20MHz repetition rate which is important for time-gated measurements given the temporal response time of tissue.

Docket Number: 15–045. Applicant: University of Massachusetts Medical School, Worchester, MA 01655. Instrument: Vitrobot. Manufacturer: FEI Electron Optics, B.V., the Netherlands. Intended Use: See notice at 80 FR 65984–85, October 28, 2015. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to understand the three-dimensional structure of purified proteins and complexes at the atomic level, and how this is related to their function, by freezing them, then examining them in the frozen state in an electron microscope. The instrument can precisely control the humidity at any level, and can also control the temperature of the chamber, which is essential to freeze the proteins and complexes under exactly defined conditions, which is a requirement for all of the studies. The specimen remains in the humidity-controlled environment until the instant of freezing, which is essential to prevent any evaporation of water from the specimen before freezing.

Docket Number: 15–050. Applicant: Rutgers University, Brunswick, NJ 08901. Instrument: Junior Micromanipulator unit with remote control system, shifting table and chamber unit parts. Manufacturer: Luigs & Neumann, Germany. Intended Use: See notice at 80 FR 79307–08, December 21, 2015. Comments: None received. *Decision:* Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to simultaneously measure the microscopic electric signals generated from neurons, specifically the patch-clamp whole cell recordings from neurons, to identify specific alterations in synaptic transmission that leads to neuropsychiatric or neurological disorders. The instrument is a highly flexible, highly precise system, offering the highest mechanical resolution and smoothest movement because of its patented spindle nut system, which guarantees a unique and extraordinary stability for long term recordings. The step motor is decoupled preventing a thermal bridge from the motor to the machine and also prevents vibration during movement. The experiments require high precision equipment to precisely determine the measurement of voltage in the mV range and current in the pA range.

Dated: February 2, 2016.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2016–02558 Filed 2–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Kentucky, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 15–001. Applicant: University of Kentucky, Lexington, KY 40506–0046. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended

Use: See notice at 80 FR 2914–15, January 21, 2015.

Docket Number: 15–029. Applicant: University of California, Irvine, Irvine, CA 92697–2575. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 80 FR 65984, October 28, 2015.

Docket Number: 15–031. Applicant: University of California, Irvine, Irvine, CA 92697–2575. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 80 FR 65984, October 28, 2015.

Docket Number: 15–035. Applicant: Drexel University, Philadelphia, PA 19104. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 80 FR 65984, October 28, 2015.

Docket Number: 15–036. Applicant: The Trustees of Princeton University, Princeton, NJ 08540. Instrument: Electron Microscope. Manufacturer: FEI Czech Republic s.r.o., Czech Republic. Intended Use: See notice at 80 FR 65984, October 28, 2015.

Docket Number: 15–037. Applicant: The Trustees of Princeton University, Princeton, NJ 08540. Instrument: Electron Microscope. Manufacturer: FEI Electron Optics BV, the Netherlands. Intended Use: See notice at 80 FR 65984, October 28, 2015.

Docket Number: 15–038. Applicant: South Dakota State University, Brookings, SD 57007. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 80 FR 65984, October 28, 2015.

Docket Number: 15–039. Applicant: University of Texas Southwestern Medical Center, Dallas, TX 75390. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 80 FR 65984–85, October 28, 2015.

Docket Number: 15–040. Applicant: UT Battelle, Oak Ridge National Laboratory, Oak Ridge TN 37831–6138. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 80 FR 65984–85, October 28, 2015.

Docket Number: 15–043. Applicant: New York Structural Biology Center, New York, NY 10027. Instrument: Electron Microscope. Manufacturer: FEI Co., the Netherlands. Intended Use: See notice at 80 FR 65984–85, October 28, 2015.

Docket Number: 15–046. Applicant: National Institute for Occupational Safety & Health, Morgantown, WV 26505. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 80 FR 65984–85, October 28, 2015.

Docket Number: 15–048. Applicant: Battelle/Pacific Northwest National Laboratory, Richland, WA 99352. Instrument: Electron Microscope. Manufacturer: FEI Co., Czech Republic. Intended Use: See notice at 80 FR 79307, December 21, 2015.

Docket Number: 15–053. Applicant: University of California at San Diego, La Jolla, CA 92093–0651. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 80 FR 79307–08, December 21, 2015.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: February 3, 2016.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2016–02552 Filed 2–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: Effective date: February 9, 2016.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''the Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (''Q&V'') Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Respondent Selection—Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules (''Solar Cells and Modules''), From the People's Republic of China (''PRC'')

In the event the Department limits the number of respondents for individual examination in the administrative review of the antidumping duty order on solar cells and modules from the PRC, the Department intends to select respondents based on volume data contained in responses to Q&V Questionnaires. Further, the Department intends to limit the number of Q&V Questionnaires issued in the review based on CBP data for U.S. imports of solar cells and solar modules from the PRC. The units used to measure the imported quantities of solar cells and solar modules are ''number''; however, it would not be meaningful to sum the number of imported solar cells and the number of imported solar modules in attempting to determine the largest PRC exporters of subject merchandise by volume. Therefore, the Department will limit the number of Q&V Questionnaires issued based on the import values in CBP data which will serve as a proxy for imported quantities. Parties subject to the review to which the Department does not send a Q&V Questionnaire may file a response to the Q&V Questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. The Q&V Questionnaire will be available on the Department's Web site at *http://trade.gov/enforcement/news.asp* on the date of publication of this notice in the **Federal Register**. The responses to the Q&V Questionnaire must be received by the Department no later than 21 days after the signature date of this initiation notice. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V Questionnaire. Parties will be given the opportunity to comment on the CBP data used by the Department to limit the number of Q&V Questionnaires issued. We intend to place CBP data on the record within five days of publication of this notice in the **Federal Register**. Comments regarding the CBP data and respondent selection should be submitted seven days after placement of the CBP data on the record.

Respondent Selection—Multilayered Wood Flooring, From the PRC

In the event that the Department limits the number of respondents for individual examination in the administrative review of the antidumping duty order on multilayered wood flooring from the PRC, the Department intends to select respondents based on volume data contained in responses to Q&V Questionnaires. Further, the Department intends to limit the number of Q&V Questionnaires issued in the review based on CBP data for U.S. imports of multilayered wood flooring from the PRC. Since the units used to measure import quantities are not consistent across the Harmonized Tariff Schedule of the United States headings identified in the scope of the order on multilayered wood flooring from the PRC, it would not be meaningful to sum inconsistent units in attempting to determine the largest PRC exporters of subject merchandise by volume. Therefore, the Department will limit the number of Q&V Questionnaires issued based on the import values in CBP data which will serve as a proxy for import quantities. Parties subject to the review to which the Department does not send a Q&V Questionnaire may file a response to the Q&V Questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. The Q&V Questionnaire will be available on the Department's Web site at *http://trade.gov/enforcement/news.asp* on the date of publication of this notice in the **Federal Register**. The responses to the Q&V Questionnaire must be received by the Department no later than 21 days after the signature date of this initiation notice. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V Questionnaire. Parties will be given the opportunity to comment on the CBP data used by the Department to limit the number of Q&V Questionnaires issued. We intend to place CBP data on the record within five days of publication of this notice in the **Federal Register**. Comments regarding the CBP data and respondent selection should be submitted seven days after placement of the CBP data on the record.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name [3], should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2016.

	Period to be reviewed
Antidumping Duty Proceedings	
India: Certain Hot-Rolled Carbon Steel Flat Products A–533–820	12/1/14–11/30/15
Ispat Industries, Ltd.	
JSW ISPAT Steel, Ltd.	
JSW Steel, Ltd.	
Tata Steel, Ltd.	
Republic of Korea: Certain Circular Welded Non-Alloy Steel Pipe [4] A–580–809	11/1/14–10/31/15
Hyundai Steel	
Republic of Korea: Welded ASTM A–312 Stainless Steel Pipe A–580–810	12/1/14–11/30/15
SeAH Steel Corporation	
LS Metal Co., Ltd.	
Russia: Certain Hot-Rolled Carbon Steel Flat Products A–821–809	12/19/14–11/30/15
Severstal Export GmbH	
PAO Severstal	
Taiwan: Steel Wire Garment Hangers A–583–849	12/1/14–11/30/15
Golden Canyon Limited	
Intini Co., Ltd.	
Mindful Life and Coaching Co., Ltd.	
Ocean Concept Corporation	
Taiwan Hanger Manufacturing Co., Ltd.	

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Young Max Enterprises Co. Ltd.	
The People's Republic of China: Cased Pencils A–570–827	12/1/14–11/30/15
Orient International Holding Shanghai Foreign Trade Co. Ltd.	
Shandong Rongxin Import & Export Co., Ltd.	
Wah Yuen Stationery Co. Ltd.	
Shandong Wah Yuen Stationery Co. Ltd.	
Tianjian Tonghe Stationery Co. Ltd	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules A–570–979	12/1/14–11/30/15
Canadian Solar Inc.	
Canadian Solar International Limited	
Canadian Solar Manufacturing (Changshu) Inc.	
Canadian Solar Manufacturing (Luoyang) Inc.	
Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd.	
Chint Solar (Zhejiang) Co., Ltd.	
Dongguan Sunworth Solar Energy Co., Ltd.	
ERA Solar Co., Ltd.	
ET Solar Energy Limited	
Hangzhou Sunny Energy Science and Technology Co., Ltd	
Hengdian Group DMEGC Magnetics Co., Ltd.	
JA Solar Technology Yangzhou Co., Ltd.	
Jiangsu High Hope Int'l Group	
Jiangsu Sunlink PV Technology Co., Ltd.	
Jiawei Solarchina (Shenzhen) Co., Ltd.	
Jiawei Solarchina Co., Ltd.	
JingAo Solar Co., Ltd.	
Jinko Solar Co., Ltd.	
Jinko Solar Import and Export Co., Ltd.	
JinkoSolar International Limited	
Lightway Green New Energy Co., Ltd.	
Ningbo ETDZ Holdings, Ltd.	
Ningbo Hisheen Electrical Co., Ltd.	
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	
Risen Energy Co., Ltd.	
Shanghai BYD Co., Ltd.	
Shanghai JA Solar Technology Co., Ltd.	
Shenzhen Glory Industries Co., Ltd.	
Shenzhen Sungold Solar Co., Ltd.	
Shenzhen Topray Solar Co., Ltd.	
Star Power International Limited	
Systemes Versilis, Inc.	
Taizhou BD Trade Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Toenergy Technology Hangzhou Co., Ltd.	
Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd.	
Wuxi Tianran Photovoltaic Co., Ltd.	
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./Shenzhen Yingli New Energy Resources Co., Ltd.	
BYD (Shangluo) Industrial Co., Ltd.	
Yingli Green Energy International Trading Company Limited	
Zhejiang Era Solar Technology Co., Ltd	
Zhejiang Jinko Solar Co., Ltd.	
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	
Zhongli Talesun Solar Co. Ltd.	
The People's Republic of China: Honey A–570–863	12/1/14–11/30/15
Wuhu Haoyikuai Imp & Emp	
Shanghai Sunbeauty Trading	
Shanghai Sha Mei Trade Co., Ltd.	
The People's Republic of China: Multilayered Wood Flooring A–570–970	12/1/14–11/30/15
A&W (Shanghai) Woods Co., Ltd.	
Anhui Boya Bamboo&Wood Products Co., Ltd.	
Anhui Longhua Bamboo Product Co., Ltd.	
Anhui Suzhou Dongda Wood Co., Ltd.	
Baishan Huafeng Wood Product Co., Ltd.	
Baiying Furniture Manufacturer Co., Ltd.	
Benxi Wood Company	
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.	
Changzhou Hawd Flooring Co., Ltd.	

	Period to be reviewed
Cheng Hang Wood Co., Ltd.	
Chinafloors Timber (China) Co., Ltd.	
Dalian Dajen Wood Co., Ltd.	
Dalian Huade Wood Product Co., Ltd.	
Dalian Huilong Wooden Products Co., Ltd.	
Dalian Jiahong Wood Industry Co., Ltd	
Dalian Jiuyuan Wood Industry Co., Ltd.	
Dalian Kemian Wood Industry Co., Ltd.	
Dalian Penghong Floor Products Co., Ltd.	
Dalian Qianqiu Wooden Product Co., Ltd.	
Dalian T-Boom Wood Products Co., Ltd.	
Dalian Xinjinghua Wood Co., Ltd.	
Dongtai Fuan Universal Dynamics, LLC	
Dongtai Zhangshi Wood Industry Co. Ltd.	
Dun Hua City Jisen Wood Industry Co., Ltd.	
Dun Hua Sen Tai Wood Co., Ltd.	
Dunhua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua City Wanrong Wood Industry Co., Ltd.	
Fine Furniture (Shanghai) Limited and Double F Limited Fu Lik Timber (HK) Co., Ltd.	
Fusong Jinlong Wooden Group Co., Ltd.	
Fusong Jinqiu Wooden Product Co., Ltd.	
Fusong Qianqiu Wooden Product Co., Ltd.	
GTP International Ltd.	
Guangdong Yihua Timber Industry Co., Ltd.	
Guangzhou Homebon Timber Manufacturing Co., Ltd.	
Guangzhou Panyu Kangda Board Co., Ltd.	
Guangzhou Panyu Southern Star Co., Ltd.	
HaiLin LinJing Wooden Products, Ltd.	
HaiLin XinCheng Wooden Products, Ltd.	
Hangzhou Dazhuang Floor Co., Ltd. (dba Dasso Industrial Group Co., Ltd.)	
Hangzhou Hanje Tec Co., Ltd.	
Hangzhou Huahi Wood Industry Co., Ltd.	
Henan Xingwangjia Technology Co., Ltd.	
Huber Engineering Wood Corp.	
Hunchun Forest Wolf Wooden Industry Co., Ltd.	
Hunchun Xingjia Wooden Flooring Inc.	
Huzhou City Nanxun Guangda Wood Co., Ltd.	
Huzhou Chenghang Wood Co., Ltd.	
Huzhou Fulinmen Imp. & Exp. Co., Ltd.	
Huzhou Fuma Wood Co., Ltd.	
Huzhou Jesonwood Co., Ltd.	
Huzhou Muyun Wood Co., Ltd.	
Huzhou Sunergy World Trade Co., Ltd.	
Jiafeng Wood (Suzhou) Co., Ltd.	
Jiangsu Guyu International Trading Co., Ltd.	
Jiangsu Keri Wood Co., Ltd.	
Jiangsu Kentier Wood Co., Ltd.	
Jiangsu Mingle Flooring Co.	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	
Jiangsu Simba Flooring Co., Ltd.	
Jiangsu Yuhui International Trade Co., Ltd.	
Jiashan Huijiale Decoration Material Co., Ltd.	
Jiashan On-Line Lumber Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.	
Jilin Xinyuan Wooden Industry Co., Ltd.	
Karly Wood Product Limited	
Kember Hardwood Flooring, Inc.	
Kemian Wood Industry (Kunshan) Co., Ltd.	
Kingman Floors Co., Ltd.	
Linyi Anying Wood Co., Ltd.	
Linyi Bonn Flooring Manufacturing Co., Ltd.	
Linyi Youyou Wood Co., Ltd.	
Metropolitan Hardwood Floors, Inc.	
Mudanjiang Bosen Wood Industry Co., Ltd.	
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.	
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.	
Puli Trading Limited	
Qingdao Barry Flooring Co., Ltd	
Scholar Home (Shanghai) New Material Co. Ltd.	
Shandong Kaiyuan Wood Industry Co., Ltd.	
Shanghai Anxin (Weiguang) Timber Co., Ltd.	

	Period to be reviewed
Shanghai Eswell Timber Co., Ltd.	
Shanghai Lairunde Wood Co., Ltd.	
Shanghai New Sihe Wood Co., Ltd.	
Shanghai Shenlin Corporation	
Shenyang Haobainian Wooden Co., Ltd.	
Shenyang Senwang Wooden Industry Co., Ltd.	
Shenzhenshi Huanwei Woods Co., Ltd.	
Sino-Maple (Jiangsu) Co., Ltd.	
Suzhou Dongda Wood Co., Ltd.	
Tongxiang Jisheng Import and Export Co., Ltd.	
Vicwood Industry (Suzhou) Co. Ltd.	
Xiamen Yung De Ornament Co., Ltd.	
Xuzhou Antop International Trade Co., Ltd.	
Xuzhou Shenghe Wood Co., Ltd.	
Yekalon Industry, Inc.	
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.	
Yixing Lion-King Timber Industry	
Zhejiang AnJi Xinfeng Bamboo and Wood Industry Co., Ltd.	
Zhejiang Biyork Wood Co., Ltd.	
Zhejiang Dadongwu Green Home Wood Co., Ltd.	
Zhejiang Desheng Wood Industry Co., Ltd.	
Zhejiang Fudeli Timber Industry Co., Ltd.	
Zhejiang Fuerjia Wooden Co., Ltd.	
Zhejiang Fuma Warm Technology Co., Ltd.	
Zhejiang Haoyun Wooden Co., Ltd.	
Zhejiang Jiechen Wood Industry Co., Ltd.	
Zhejiang Longsen Lumbering Co., Ltd.	
Zhejiang Shiyou Timber Co., Ltd.	
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.	
United Arab Emirates: Polyethylene Terephthalate (PET) Film, Sheet and Strip[5] A–520–803	11/1/14–10/31/15
JBF RAK LLC	
Countervailing Duty Proceedings	
The People's Republic of China: Certain New Pneumatic Off-The-Road Tires[6] C–570–913	1/1/14–12/31/14
Kenda Rubber (China) Co Ltd.	
The People's Republic of China: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules C–570–980	1/1/14–12/31/14
Baoding Jiasheng Photovoltaic Technology Co. Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
Beijing Tianneng Yingli New Energy Resources Co. Ltd.	
BYD (Shangluo) Industrial Co., Ltd.	
Canadian Solar Inc.	
Canadian Solar International, Ltd.	
Canadian Solar Manufacturing (Changshu), Inc.	
Canadian Solar Manufacturing (Luoyang), Inc.	
Changzhou Trina Solar Energy Co., Ltd.	
Changzhou Trina Solar Yabang Energy Co., Ltd.	
Chint Solar (Zhejiang) Co., Ltd.	
ERA Solar Co. Limited	
ET Solar Energy Limited	
ET Solar Industry Limited	
Hainan Yingli New Energy Resources Co., Ltd.	
Hangzhou Sunny Energy Science and Technology Co., Ltd.	
Hengshui Yingli New Energy Resources Co., Ltd.	
JA Solar Technology Yangzhou Co., Ltd.	
Jiawei Solarchina Co., Ltd.	
Jiawei Solarchina (Shenzhen) Co., Ltd.	
JingAo Solar Co., Ltd.	
Jinko Solar Co., Ltd.	
Jinko Solar Import and Export Co., Ltd.	
JinkoSolar (U.S.) Inc.	
JinkoSolar International Limited	
Lightway Green New Energy Co., Ltd.	
Lixian Yingli New Energy Resources Co., Ltd.	
Luoyang Suntech Power Co., Ltd.	
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	
Shanghai JA Solar Technology Co., Ltd.	
Shanghai BYD Co., Ltd.	
Shenzhen Topray Solar Co. Ltd.	
Systemes Versilis, Inc.	
Taizhou BD Trade Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Yingli New Energy Resources Co., Ltd.	
Toenergy Technology Hangzhou Co., Ltd.	

	Period to be reviewed
Trina Solar (Changzhou) Science and Technology Co., Ltd.	
Wuxi Suntech Power Co., Ltd.	
Yancheng Trina Solar Energy Technology Co., Ltd.	
Yingli Energy (China) Co., Ltd.	
Yingli Green Energy Holding Company Limited	
Yingli Green Energy International Trading Company Limited	
Zhejiang Jinko Solar Co., Ltd.	
Zhejiang Sunflower Light Energy Science & Technology Liability Company	
The People's Republic of China: Lightweight Thermal Paper[7] C–570–921	1/1/14–12/31/14
Hangong International Limited	
Jaan Huey Co. Ltd.	
Shanghai Hanhong Paper Co Ltd.	
The People's Republic of China: Multilayered Wood Flooring C–570–971	1/1/14–12/31/14
A&W (Shanghai) Woods Co., Ltd.	
Anhui Boya Bamboo & Wood Products Co., Ltd.	
Anhui Longhua Bamboo Product Co., Ltd.	
Baishan Huafeng Wood Product Co., Ltd.	
Baroque Timber Industries (Zhongshan) Co., Ltd.	
Baiying Furniture Manufacturer Co., Ltd.	
Benxi Wood Company	
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.	
Changzhou Hawd Flooring Co., Ltd.	
Cheng Hang Wood Co., Ltd.	
Chinafloors Timber (China) Co., Ltd.	
Dalian Dajen Wood Co., Ltd.	
Dalian Huade Wood Product Co., Ltd.	
Dalian Huilong Wooden Products Co., Ltd.	
Dalian Jiahong Wood Industry Co., Ltd	
Dalian Jiuyuan Wood Industry Co., Ltd.	
Dalian Kemian Wood Industry Co., Ltd.	
Dalian Penghong Floor Products Co., Ltd.	
Dalian T-Boom Wood Products Co., Ltd.	
Dalian Xinjinghua Wood Co., Ltd.	
Dongtai Fuan Universal Dynamics, LLC	
Dongtai Zhangshi Wood Industry Co. Ltd.	
Double F Limited	
Dunhua City Jisen Wood Industry Co., Ltd.	
Dun Hua Sen Tai Wood Co., Ltd.	
Dunhua City Dexin Wood Industry Co., Ltd.	
Dunhua City Hongyuan Wood Industry Co., Ltd.	
Dunhua City Wanrong Wood Industry Co., Ltd.	
Fine Furniture (Shanghai) Limited	
Fu Lik Timber (HK) Co., Ltd.	
Fusong Jinlong Wooden Group Co., Ltd.	
Fusong Qianqiu Wooden Product Co., Ltd.	
GTP International Ltd.	
Guangdong Yihua Timber Industry Co., Ltd.	
Guangzhou Homebon Timber Manufacturing Co., Ltd.	
Guangzhou Panyu Kangda Board Co., Ltd.	
Guangzhou Panyu Southern Star Co., Ltd.	
HaiLin LinJing Wooden Products, Ltd.	
HaiLin XinCheng Wooden Products, Ltd.	
Hangzhou Dazhuang Floor Co., Ltd. (dba Dasso Industrial Group Co., Ltd.)	
Hangzhou Hanje Tec Co., Ltd.	
Hangzhou Huahi Wood Industry Co., Ltd.	
Henan Xingwangjia Technology Co., Ltd.	
Huber Engineering Wood Corp.	
Hunchun Forest Wolf Wooden Industry Co., Ltd.	
Hunchun Xingjia Wooden Flooring Inc.	
Huzhou Chenghang Wood Co., Ltd.	
Huzhou City Nanxun Guangda Wood Co., Ltd.	
Huzhou Fulinmen Imp. & Exp. Co., Ltd.	
Huzhou Fuma Wood Co., Ltd.	
Huzhou Jesonwood Co., Ltd.	
Huzhou Muyun Wood Co., Ltd.	
Huzhou Sunergy World Trade Co., Ltd.	
Jiafeng Wood (Suzhou) Co., Ltd.	
Jiangsu Guyu International Trading Co., Ltd.	
Jiangsu Keri Wood Co., Ltd.	
Jiangsu Mingle Flooring Co., Ltd.	
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.	
Jiangsu Simba Flooring Co., Ltd.	
Jiashan HuiJiaLe Decoration Material Co., Ltd.	

	Period to be reviewed
Jiashan On-Line Lumber Co., Ltd.	
Jiaxing Hengtong Wood Co., Ltd.	
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.	
Jilin Xinyuan Wooden Industry Co., Ltd.	
Karly Wood Product Limited	
Kemian Wood Industry (Kunshan) Co., Ltd.	
Kingman Floors Co., Ltd.	
Linyi Anying Wood Co., Ltd.	
Linyi Bonn Flooring Manufacturing Co., Ltd.	
Linyi Youyou Wood Co., Ltd.	
Mudanjiang Bosen Wood Industry Co., Ltd.	
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd.	
Nanjiing Minglin Wooden Industry Co., Ltd.	
Pinge Timber Manufacturing (Zhejiang) Co., Ltd.	
Puli Trading Limited	
Qingdao Barry Flooring Co., Ltd	
Riverside Plywood Corporation	
Samling Elegant Living Trading (Labuan) Limited	
Samling Riverside Co., Ltd.	
Shandong Kaiyuan Wood Industry Co., Ltd.	
Shanghai Anxin (Weiguang) Timber Co., Ltd.	
Shanghai Eswell Timber Co., Ltd.	
Shanghai Lairunde Wood Co., Ltd.	
Shanghai Lizhong Wood Products Co., Ltd. (also known as The Lizhong Wood Industry Limited Company of Shanghai)	
Shanghai New Sihe Wood Co., Ltd.	
Shanghai Shenlin Corporation	
Shenyang Haobainian Wooden Co., Ltd.	
Shenyang Senwang Wooden Industry Co., Ltd.	
Shenzhenshi Huanwei Woods Co., Ltd.	
Sino-Maple (Jiangsu) Co., Ltd.	
Suzhou Dongda Wood Co., Ltd.[8]	
Tongxiang Jisheng Import and Export Co., Ltd.	
Vicwood Industry (Suzhou) Co. Ltd.	
Xiamen Yung De Ornament Co., Ltd.	
Xuzhou Antop International Trade Co., Ltd.	
Xuzhou Shenghe Wood Co., Ltd.	
Yekalon Industry, Inc.	
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.	
Yixing Lion-King Timber Industry Co., Ltd.	
Zhejiang Anji Xinfeng Bamboo and Wood Industry Co., Ltd.	
Zhejiang Biyork Wood Co., Ltd.	
Zhejiang Dadongwu Green Home Wood Co., Ltd.	
Zhejiang Desheng Wood Industry Co., Ltd.	
Zhejiang Fudeli Timber Industry Co., Ltd.	
Zhejiang Fuerjia Wooden Co., Ltd.	
Zhejiang Fuma Warm Technology Co., Ltd.	
Zhejiang Haoyun Wooden Co., Ltd.	
Zhejiang Longsen Lumbering Co., Ltd.	
Zhejiang Shiyou Timber Co., Ltd.	
Zhejiang Shuimojiangnan New Material Technology Co., Ltd	
Suspension Agreements	
Mexico: Sugar A–201–845	12/19/14–11/30/15
Mexico: Sugar[9] C–201–846	12/19/14– 12/31/14

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR

[4] The company listed above was inadvertently omitted from the initiation notice that published on January 7, 2016 (81 FR 736).

[5] The name of the company listed below was misspelled in the initiation notice that published on January 7, 2016 (81 FR 736). The correct spelling of the company name is listed in this notice.

[6] The name of the company listed below was misspelled in the initiation notice that published on November 9, 2015 (80 FR 69193). The correct spelling of the company name is listed in this notice.

[7] In the initiation notice covering cases with November anniversary dates, the Department inadvertently omitted Lightweight Thermal Paper from the PRC. This is a correction to the January 7, 2016, initiation notice (81 FR 736).

[8] The Department found that the official name of Anhui Suzhou Dongda Wood Co., Ltd. is Suzhou Dongda Wood Co., Ltd. *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Administrative Review of Countervailing Duty Order; 2012* and accompanying Issues and Decision Memorandum at 24.

[9] Imperial Sugar Company and the American Sugar Coalition have requested that the period of review for this review be extended to include not only the period 12/19/14–12/31/14 but also calendar year 2015. We are initiating this review for the period 12/19/14–12/31/14; however, we are actively considering these requests, and we will solicit comments from interested parties on this issue. After careful consideration of these comments, we will timely inform parties of our decision.

351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States*, 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.*, the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt*, prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[10] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[11] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule*, 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: February 3, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–02578 Filed 2–8–16; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* section 782(b) of the Act.

[11] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (''*Final Rule*''); *see also* the frequently asked questions regarding the *Final Rule*, available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–837]

Certain Magnesia Carbon Bricks From Mexico: Rescission of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico for the period of review September 1, 2014, through August 31, 2015 (POR).

DATES: *Effective Date:* February 9, 2016.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, 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) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2015, the Department published in the **Federal Register** a notice of opportunity to request administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico for the POR.[1]

On September 30, 2015, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from the Magnesia Carbon Bricks Fair Trade Committee (the Committee) [2] to conduct an administrative review of the POR sales of RHI-Refmex S.A. de C.V., Trafinsa S.A. de C.V., Vesuvius Mexico S.A. de C.V., and Ferro Alliages & Mineraux Inc. On November 9, 2015, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico with respect to these companies.[3] On January 19, 2016, the Committee timely withdrew all its requests for review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The Committee withdrew its request for review before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico for the POR. Therefore, in response to the timely withdrawal of the request for review and pursuant to 19 CFR 351.213(d)(1), the Department is rescinding this review in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 41 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: February 3, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–02553 Filed 2–8–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 52741 (September 1, 2015).

[2] The Committee is an ad hoc association comprised of the following three U.S. producers of magnesia carbon bricks: Resco Products, Inc.; Magnesita Refractories Company; and Harbison Walker International, Inc. *See* September 30, 2015, Letter regarding Certain Magnesia Carbon Bricks From Mexico: Request For Administrative Review.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 69193, 69195 (November 9, 2015).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Fisheries Participation Survey

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 April 11, 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 Karma Norman, Northwest Fisheries Science Center, (206) 302–2418 or *Karma.Norman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

Fishing livelihoods are both centrally dependent on marine ecosystems and part of the set of forces acting on other components of these ecosystems, including the ecosystem's resident fish and marine species. Alongside social factors like economics and management actions, biophysical dynamics within the ecosystems, including fisheries

population fluctuations, shape fishing livelihoods. However, the decisions fishermen make regarding which fisheries to access and when to access them are not fully understood, particularly within the holistic food web frameworks offered up by ecosystem-based approaches to research and management. Moreover, a full understanding and predictive capacity for these movements of fishermen across fisheries in the context of ecological and social variability presents a significant gap in management-oriented knowledge. Managing fisheries in a way that enhances their social and economic value, mitigates risks to ecosystems and livelihoods, and facilitates sustainable adaptation, requires this fundamental knowledge.

For this reason, the Northwest Fisheries Science Center (NWFSC) seeks to conduct fisheries participation analyses which involve a survey of United States (U.S.) West Coast commercial fishing participants. A U.S. mail survey will be conducted. The survey will be voluntary, and contacted individuals may decline to participate. Respondents will be asked to answer questions about their motivations for fishing and other factors that affect participation in the suite of West Coast commercial fisheries. Demographic and employment information will be collected so that responses can be organized based on a respondent typology. This survey is essential because data on smaller scale fishing practices, values, participation decisions and beliefs about fishing livelihoods are sparse; yet, they are critical to the development of usable fishery ecosystem models that account for non-pecuniary benefits of fishing, as well as the ways in which fishing practices shape individual and community well-being.

II. Method of Collection

Respondents will be contacted via mail for administration of the survey.

III. Data

OMB Control Number: 0648-xxxx.

Form Number(s): None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

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: February 3, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–02410 Filed 2–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Reminder Re: United Launch Alliance (ULA) Consent Order and Recent Change in Department of Defense (DOD) Compliance Officer

AGENCY: Principal DOD Space Advisor Staff, Department of Defense (DOD).

ACTION: Publicize Consent Order, Notify Public of New DOD Compliance Officer and Provide Points of Contact for Information and/or Comment Submittal.

SUMMARY: This is not a notice of solicitation issuance. The Director, Principal DOD Space Advisor Staff, as the Compliance Officer under the Federal Trade Commission (FTC) Decision and Order (hereinafter referred to as the ''Consent Order''), in the Matter of Lockheed Martin Corporation (LMC), the Boeing Company (Boeing), and United Launch Alliance, L.L.C. (ULA) (hereinafter referred to as the ''Respondents''), Docket No. C–4188, dated May 1, 2007, is posting this notice to publicize the Consent Order, notify the Public of a change in DOD Compliance Officer personnel and to provide points of contact for further information or for comment submittal.

The Consent Order: The Consent Order requires that with regard to covered Government programs, (1) ULA afford all space vehicle manufacturers non-discriminatory treatment for launch services that ULA may provide, and that (2) LMC and Boeing, as space vehicle manufacturers, consider all qualified launch service providers on a non-discriminatory basis. Covered programs are Government programs which are delivered in orbit and utilize medium-to-heavy launch services. The Consent Order also requires firewalls to prevent information from a space vehicle provider being shared by ULA with its Boeing or LMC parent company. Similarly, Boeing and LMC must have firewalls to ensure that other launch service information is not shared with ULA. The Consent Order also requires that the Department of Defense appoint a Compliance Officer to oversee compliance with the Consent Order by all three Respondents. The Consent Order remains in full effect through 30 April 2017. The complete text of the ULA Consent Order and supplementary information is located on the following FTC Web site: *http://www.ftc.gov/enforcement/cases-proceedings/0510165/lockheed-martin-corporation-boeing-company-united-launch.*

DOD Compliance Officer: The DOD Compliance Officer is the Director, Principal DOD Space Advisor Staff. The duties of this position are now conducted by Mr. Winston A. Beauchamp.

Points of Contact for Further Information or Inquiries: For further information and inquires, or to request a meeting with the DOD Compliance Officer or her Government Compliance Team, interested parties should contact either Mrs. Sarah Beth Cliatt (Compliance Division Chief), Tel: 719–556–2268; or Colonel Marc Berkstresser (Deputy Compliance Division Chief), Tel: 703–693–3634.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2016–02544 Filed 2–8–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment

AGENCY: Office of the Under Secretary (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. § 3951, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. The law requires the Department of Defense to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. We have applied the inflation index required by the statute. The maximum monthly rental amount for 50 U.S.C. App. § 3951 (a)(1)(A)(ii) as of January 1, 2016, will be $3,451.20.

DATES: *Effective Date:* January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Lt Col Reggie D. Yager, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 571–9301.

Dated: February 3, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–02445 Filed 2–8–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on March 21, 2016, will include discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishment proceedings involving midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade; the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on March 21, 2016, from 9:00 a.m. to 11:00 a.m. The executive session held from 11:00 a.m. to 12:00 p.m. will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, MD. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eric Madonia, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on March 21, 2016, will consist of discussions of new and pending administrative/minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor/conduct violations within the Brigade. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Department of the Navy/Assistant for Administration has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

(Authority: 5 U.S.C. 552b)

Dated: February 3, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–02513 Filed 2–8–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; NCP Coatings, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** on July 31, 2014, announcing an intent to grant to NCP Coatings, Inc. a revocable, nonassignable, exclusive license. The scope of the intent to license has been revised.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202 767–3083. Due to U.S. Postal delays, please fax 202 404–7920, email: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Correction

In the **Federal Register** of July 31, 2014, make the following revision:

1. In the first and second column, on page 44428, revise the **SUMMARY** caption to read as follows:

''**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to NCP Coatings, Inc., a revocable, nonassignable, exclusive license to practice in the field of use of manufacture and sale of single-component moisture-curable coatings for commercial marine, architectural, industrial OEM, automotive refinish, aerospace, and amusement park structural applications to metallic surfaces which require abrasion and oil/grease resistance in the United States, the Government–owned inventions described in U.S. Patent No. 9,139,753: Single-Component Moisture-Curable Coatings Based on N-Substituted Urea Polymers with Extended Chains and Terminal Alkoxysilanes, Navy Case No. 102,270 and any continuations, divisionals or re-issues thereof.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 24, 2016.

Dated: February 3, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–02514 Filed 2–8–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Final Environmental Impact Statement/Legislative Environmental Impact Statement for Renewal of the Naval Air Weapons Station China Lake Public Land Withdrawal, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN), after carefully weighing the strategic, operational, and environmental consequences of the proposed action, announces its decision to both accommodate future military operational increases and implement

and complete a revised Comprehensive Land Use Management Plan (CLUMP) at Naval Air Weapons Station China Lake (NAWSCL), California as set out in Alternative 1 of the Final Environmental Impact Statement/Legislative Environmental Impact Statement (Final EIS/LEIS) for Renewal of Naval Air Weapons Station China Lake Public Land Withdrawal. Implementation of this alternative includes Congressional renewal of the public land withdrawal (25-year renewal), accommodation of an increase in Research, Development, Acquisition, Test, and Evaluation and training tempo (up to 25 percent) within current land use areas approved for designated uses, expansion of unmanned aerial and surface systems, and expansion of existing and introduction of evolving directed energy weapons development. Nonmilitary activities would continue according to current patterns of use. Proposed land use changes would be accommodated in accordance with the CLUMP and applicable NAWSCL approval processes. Natural and cultural resources would continue to be conserved with implementation of the CLUMP management process.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision is available at *http://www.chinalakeeis.com.* Single copies of the Record of Decision are available upon request by contacting: Naval Facilities Engineering Command Southwest, Attn: Teresa Bresler, 1220 Pacific Highway, San Diego, CA 92132.

Dated: February 3, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–02512 Filed 2–8–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–4–000]

Commission Information Collection Activities (FERC–500, FERC–542); Consolidated Comment Request; Extension; Errata Notice

On December 14, 2015, the Commission published a ''60-day Public Notice'' in the above-captioned proceeding, *Commission Information Collection Activities (FERC–500, FERC–542); Consolidated Comment Request; Extension.* [1]

[1] 80 FR 79322, December 21, 2015.

This errata notice serves to correct the section and associated table for the FERC–542 (Gas Pipeline Rates: Rate Tracking, OMB Control No. 1902–0070).

The Abstract should indicate that the FERC–542 also includes the reporting requirements in 18 CFR 154.401 (research, development, and demonstration [RD&D] expenditures) and 18 CFR 154.403 (Periodic rate adjustments). In the table for FERC–542, the correct number of respondents is 87, with an average of 2.13 responses per respondent and a total of 185 responses.

With the updates stated above, the correct total annual burden hours is 370, and the correct total annual cost is $26,640.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02508 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–67–000.

Applicants: Astoria Generating Company, L.P., Crete Energy Venture, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, Rolling Hills Generating, L.L.C.

Description: Application for authorization for disposition of jurisdictional facilities of Astoria Generating Company, L.P., et al.

Filed Date: 2/1/16.

Accession Number: 20160201–5590.

Comments Due: 5 p.m. ET 2/22/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2201–002; ER10–2212–002; ER12–1997–003; ER12–1998–003; ER13–1931–003; ER13–2043–003; ER13–2044–003; ER15–1176–002; ER15–1177–002; ER15–1178–002; ER16–237–002; ER16–238–002; ER13–291–002.

Applicants: Marina Energy, LLC, South Jersey Energy Company, South Jersey Energy ISO1, LLC, South Jersey Energy ISO2, LLC, South Jersey Energy ISO3, LLC, South Jersey Energy ISO4, LLC, South Jersey Energy ISO5, LLC, South Jersey Energy ISO6, LLC, South Jersey Energy ISO7, LLC, South Jersey Energy ISO8, LLC, South Jersey Energy ISO9, LLC, South Jersey Energy ISO10, LLC, EnergyMark, LLC.

Description: Notice of Change in Status of the South Jersey MBR sellers.

Filed Date: 2/1/16.

Accession Number: 20160201–5635.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–444–001.

Applicants: Wabash Valley Power Association, Inc.

Description: Tariff Amendment: Wabash Valley Power Association, Inc. Reactive Rate Schedule Volume No—Clone to be effective 2/1/2016.

Filed Date: 2/1/16.

Accession Number: 20160201–5570.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–845–000.

Applicants: PJM Interconnection, L.L.C., Commonwealth Edison Company.

Description: Section 205(d) Rate Filing: ComEd submits Transmission Upgrade Agreement No. 4405 among ComEd and Ameren to be effective 2/1/2016.

Filed Date: 2/1/16.

Accession Number: 20160201–5506.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–846–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 3165 Otter Tail Power Company NITSA and NOA to be effective 1/1/2016.

Filed Date: 2/1/16.

Accession Number: 20160201–5532.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–847–000.

Applicants: Nevada Power Company.

Description: Tariff Cancellation: Rate Schedule No. 121 NPC and Boulder City Interim Ancillary Services Agreement to be effective 4/1/2013.

Filed Date: 2/1/16.

Accession Number: 20160201–5537.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–848–000.

Applicants: Nevada Power Company.

Description: Tariff Cancellation: Rate Schedule No. 127 NPC and SDG&E Agreement—Cancellation to be effective 7/1/2012.

Filed Date: 2/1/16.

Accession Number: 20160201–5538.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–849–000.

Applicants: Nevada Power Company.

Description: Tariff Cancellation: Rate Schedule No. 131 NPC & CRC Cost Reimb. Ltr Agr.—Cancellation to be effective 4/1/2013.

Filed Date: 2/1/16.

Accession Number: 20160201–5539.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–850–000.

Applicants: Nevada Power Company.

Description: Tariff Cancellation: Rate Schedule No. 134 NPC& Valley Electric

Interim Balancing Agr.—Cancellation to be effective 6/11/2014.
Filed Date: 2/1/16.
Accession Number: 20160201–5540.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–851–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 1148R22 American Electric Power NITSA and NOA to be effective 1/1/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5544.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–852–000.
Applicants: Wisconsin Electric Power Company.
Description: Section 205(d) Rate Filing: Wisconsin Electric Amended Wholesale Distribution for Alger Delta 2–1–16 to be effective 4/1/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5545.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–853–000.
Applicants: Enterprise Solar, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 4/2/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5546.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–854–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 1628R8 Western Farmers Electric Cooperative NITSA NOA to be effective 1/1/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5547.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–855–000.
Applicants: Escalante Solar I, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 4/2/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5548.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–856–000.
Applicants: Escalante Solar II, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 4/2/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5550.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–857–000.
Applicants: Escalante Solar III, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 4/2/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5551.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–858–000.
Applicants: Granite Mountain Solar East, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 4/2/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5554.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–859–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 1630R6 The Empire District Electric Company NITSA and NOA to be effective 1/1/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5566.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–860–000.
Applicants: Granite Mountain Solar West, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 4/2/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5568.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–861–000.
Applicants: Iron Springs Solar, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 4/2/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5569.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–862–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3126R1 WAPA NITSA and NOA to be effective 1/1/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5582.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–863–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3125R1 Basin Electric Power Cooperative NITSA and NOA to be effective 1/1/2016.
Filed Date: 2/1/16.
Accession Number: 20160201–5583.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–864–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Resource Termination—Spruce Mountain Wind, LLC.
Filed Date: 2/1/16.
Accession Number: 20160201–5593.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–865–000.
Applicants: Nevada Power Company.
Description: Notice of Cancellation of Service Agreement No. 4 of Nevada Power Company.
Filed Date: 2/1/16.
Accession Number: 20160201–5599.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–866–000.
Applicants: MDU Resources Group, Inc.
Description: Request for Waiver of MDU Resources Inc.
Filed Date: 2/1/16.
Accession Number: 20160201–5628.
Comments Due: 5 p.m. ET 2/22/16.
Docket Numbers: ER16–867–000.
Applicants: AEP Texas North Company.
Description: Section 205(d) Rate Filing: TNC-Texas-New Mexico Power Interconnection Agreement to be effective 1/18/2016.
Filed Date: 2/2/16.
Accession Number: 20160202–5078.
Comments Due: 5 p.m. ET 2/23/16.
Docket Numbers: ER16–868–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Amendment to ISA No. 4030, Queue No. AA1–102 to be effective 6/26/2015.
Filed Date: 2/2/16.
Accession Number: 20160202–5079.
Comments Due: 5 p.m. ET 2/23/16.
Docket Numbers: ER16–869–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original Service Agreement No. 4391; Queue AB1–020 (WMPA) to be effective 1/8/2016.
Filed Date: 2/2/16.
Accession Number: 20160202–5086.
Comments Due: 5 p.m. ET 2/23/16.
Docket Numbers: ER16–870–000.
Applicants: ISO New England Inc.
Description: Section 205(d) Rate Filing: New Effective Date for Do Not Exceed (''DNE'') Dispatch Changes to be effective 5/25/2016.
Filed Date: 2/2/16.
Accession Number: 20160202–5092.
Comments Due: 5 p.m. ET 2/23/16.
Docket Numbers: ER16–871–000.
Applicants: Portland General Electric Company.
Description: Section 205(d) Rate Filing: PGE OATT Section 7 Revision to be effective 4/2/2016.
Filed Date: 2/2/16.
Accession Number: 20160202–5094.
Comments Due: 5 p.m. ET 2/23/16.

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: February 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02468 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Planning Committee: February 11, 2016, 9:30 a.m.–12:00 p.m. (EST)

PJM Transmission Expansion Advisory Committee: February 11, 2016, 11:00 a.m.–3:00 p.m. (EST)

The above-referenced meetings will be held at:

PJM Conference and Training Center, PJM Interconnection, 2750 Monroe Boulevard, Audubon, PA 19403.

The above-referenced meetings are open to stakeholders. Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER16–429, *PJM Interconnection, L.L.C.*

Docket No. ER16–736, *PJM Interconnection, L.L.C.*

Docket No. ER14–972, *PJM Interconnection, L.L.C.*

Docket No. ER14–1485, *PJM Interconnection, L.L.C.*

Docket Nos. ER13–1944, *et al., PJM Interconnection, L.L.C., et al.*

Docket No. ER15–1344, *PJM Interconnection, L.L.C.*

Docket No. ER15–1387, *PJM Interconnection, L.L.C. and Potomac Electric Power Company*

Docket No. ER15–2562, *PJM Interconnection, L.L.C.*

Docket No. ER15–2563, *PJM Interconnection, L.L.C.*

Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*

Docket No. EL15–41, *Essential Power Rock Springs, LLC, et al.* v. *PJM Interconnection, L.L.C.*

Docket Nos. ER13–1927, *et al., PJM Interconnection, L.L.C., et al.*

Docket No. ER15–2114, *PJM Interconnection, L.L.C. and Transource West Virginia, LLC*

Docket No. EL15–79, *TransSource, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. EL15–95, *Delaware Public Service Commission, et al.,* v. *PJM Interconnection, L.L.C., et al.*

Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

For more information, contact the following: Jonathan Fernandez; Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6604, *Jonathan.Fernandez@ferc.gov*; and Alina Halay; Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6474, *Alina.Halay@ferc.gov.*

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02505 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–7–000]

James W. Park; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On January 27, 2016, James W. Park filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Park Farm Hydro Project would have an installed capacity of 15 kilowatts (kW), and would be located along the Lower Latham Ditch at an existing 400-foot-long concrete drop structure. The project would be located near the Town of Kersey, in Weld County, Colorado.

Applicant Contact: Tim Olsen, PE, Advanced Energy Systems, LLC, 1428 South Humboldt Street, Denver, CO 80210, Phone No. (303) 908–2439.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new powerhouse, approximately 8 feet by 16 feet, at the downstream end of an existing 4-foot-wide by 400-foot-long concrete drop structure; (2) a new 400-foot-long, 24-inch-diameter PVC penstock, with a Coanda screen intake, paralleling the concrete drop structure; (3) 10 cross flow turbine/generating units with an installed capacity of 15 kW; and (4) appurtenant facilities.

The proposed project would have a total installed capacity of 15 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ..	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY—Continued

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed addition of the hydroelectric project at an existing drop structure on the Lower Latham Ditch will not alter its primary purpose of distributing water for irrigation. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD16–7) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: February 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02467 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–15–000]

Reliability Technical Conference; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will hold a Technical Conference on Wednesday, June 1, 2016, from 10:00 a.m. to 4:00 p.m. This Commissioner-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The conference will be open for the public to attend. Advance registration is not required, but is encouraged. Attendees may register at *https://www.ferc.gov/whats-new/registration/06–01–16-form.asp.*

The purpose of the conference is to discuss policy issues related to the reliability of the Bulk-Power System. The Commission will issue an agenda at a later date.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the event. The conference will also be webcast and transcribed. Anyone with Internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02492 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–861–000]

Iron Springs Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Iron Springs Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02504 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2280–021]

Seneca Generation, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to amend license.

b. *Project No.:* 2280–018.

c. *Date Filed:* January 11, 2016.

d. *Applicant:* Seneca Generation, LLC.

e. *Name of Project:* Kinzua Pumped Storage Project.

f. *Location:* The project is located at the U.S. Army Corps of Engineers' Kinzua Dam on the Allegheny River, in Warren County, Pennsylvania, and occupies federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Kathy French, V.P. Environmental, LS Power, 1700 Broadway, 35th Floor, New York, NY 10019 (212) 547–4381.

i. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, or *Ashish.Desai@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the date of issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2280–021) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The applicant proposes to remove Article 407 from the project license. License Article 407 requires the applicant to file a plan to remove two weirs and an associated road located southeast of the upper reservoir of the project. The applicant claims there is no need for removal of the two weirs, since they serve a purpose for project safety.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading, the name of the applicant and the

project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02509 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–860–000]

Granite Mountain Solar West, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Granite Mountain Solar West, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02503 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–857–000]

Escalante Solar III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Escalante Solar III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02501 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–855–000]

Escalante Solar I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Escalante Solar I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02499 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–35–000]

Southern Maryland Electric Cooperative, Inc. v. J.P. Morgan Ventures Energy Corporation; Notice of Complaint

Take notice that on February 1, 2016, pursuant to Sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e (2012), and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212 (2015), Southern Maryland Electric Cooperative, Inc. (Complainant) filed a formal complaint against J.P. Morgan Ventures Energy Corporation (Respondent) alleging that Respondent has the right to Capacity Performance (CP) credit under a bilateral capacity purchase agreement that it entered into with Complainant. Complainant believes that Respondent does not intend to transfer CP credit to Complainant, starting with the 2016–2017 Delivery Year that begins June 1, 2016, all as more fully explained in the complaint.

Complainant certifies that copies of the complaint were served on the designated corporate officials for Respondent, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 21, 2016.

Dated: February 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02469 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–64–000]

ANR Pipeline Company; Notice of Application

Take notice that on January 20, 2016, ANR Pipeline Company (ANR), having its principal place of business at 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, filed in the above referenced docket an application pursuant to sections 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to install, own and operate its Collierville Expansion Project (Project) located in Shelby Counties, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Robert Jackson, Manager, Certificates and Regulatory Administration, ANR Pipeline Company, 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700; by calling (832) 320–5487; by faxing (832) 320–6487; or by emailing *robert_jackson@transcanada.com.*

Specifically, the applicant proposes the Project will consist of modifications to upgrade ANR's existing Collierville Meter Station, and install one (1) new compressor station consisting of one (1) new, approximately 4,700 horsepower turbine compressor unit and appurtenant facilities. Upon completion, ANR avers that the Project will expand the delivery capability of ANR's existing Collierville Meter Station by an additional 200 million cubic feet per day (MMcf/d), while maintaining ANR's current certificated capacity levels. ANR estimates the total cost of the Project to be $36.7 million.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on February 24, 2016.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02495 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–6–000]

Castle Valley Special Service District; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On January 27, 2016, the Castle Valley Special Service District filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Ferron Water Treatment Plant Project would have an installed capacity of 6 kilowatts (kW) and would be located at a vault on an 8-inch-diameter water supply pipe entering the water treatment plant The project would be located near the town of Ferron in Emery County, Utah.

Applicant Contact: Jacob Sharp, District Manager, Castle Valley Special Service District, 86 South 100 East, P.O. Box 877, Castle Dale, UT 84513, Phone No. (435) 381–5333.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 6-kW turbine and pressure reducing valve to be built in the new water treatment plant building, fed by an 8-inch-diameter pipeline which splits off from a 24-inch-diameter pipeline supplying untreated water to the treatment plant; and (2) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 23 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA ...	The conduit the facility uses a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*e.g.,* CD16–6–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: February 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02466 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–759–000]

Innovative Solar 43, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Innovative Solar 43, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02496 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–853–000]

Enterprise Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Enterprise Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02498 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–856–000]

Escalante Solar II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Escalante Solar II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02500 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13629–002]

Coleman Hydro, LLC; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license to construct the Coleman Hydroelectric Project, located

on Little Timber Creek near the Town of Leadore, in Lemhi County, Idaho, and has prepared a final Environmental Assessment (EA) for the project. The project would not occupy any federal lands.

The final EA includes staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Jim Hastreiter at (503) 552–2760.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02506 Filed 2–8–16; 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: ER10–2805–004; ER10–2564–005; ER10–2600–005; ER10–2289–005; EL15–42–000.

Applicants: FortisUS Energy Corporation, Central Hudson Gas & Electric Corp., Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

Description: Response to November 16, 2015 letter requesting additional information of the Fortis MBR Sellers.

Filed Date: 2/1/16.

Accession Number: 20160201–5587.

Comments Due: 5 p.m. ET 2/22/16.

Docket Numbers: ER16–877–000

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–02–03_SA 2894 Ameren-Gibson City GIA (J339) to be effective 2/4/2016.

Filed Date: 2/3/16..

Accession Number: 20160203–5126.

Comments Due: 5 p.m. ET 2/24/16.

Docket Numbers: ER16–878–000.

Applicants: NSTAR Electric Company.

Description: § 205(d) Rate Filing: CostSharing Agreement w/NGrid for Greater Boston Area Transmission Solution Plan to be effective 4/4/2016.

Filed Date: 2/3/16.

Accession Number: 20160203–5167

Comments Due: 5 p.m. ET 2/24/16.

Docket Numbers: ER16–879–000.

Applicants: Public Service Company of New Hampshire.

Description: § 205(d) Rate Filing: CostSharing Agreement w/NGrid for Greater Boston Area Transmission Solution Plan to be effective 4/4/2016.

Filed Date: 2/3/16.

Accession Number: 20160203–5168.

Comments Due: 5 p.m. ET 2/24/16.

Docket Numbers: ER16–880–000.

Applicants: Wisconsin Electric Power Company.

Description: § 205(d) Rate Filing: Wisconsin Electric—ATC Amended CFA Rate Schedule 135 to be effective 4/3/2016.

Filed Date: 2/3/16.

Accession Number: 20160203–5184.

Comments Due: 5 p.m. ET 2/24/16.

Docket Numbers: ER16–881–000.

Applicants: Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 55 SPPC & Liberty 2nd Amndmt Service Agr. to be effective 1/1/2016.

Filed Date: 2/3/16.

Accession Number: 20160203–5218.

Comments Due: 5 p.m. ET 2/24/16.

Docket Numbers: ER16–882–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: NEP Cost Sharing Agreement—Greater Boston Area Transmission Solution Plan to be effective 4/4/2016.

Filed Date: 2/3/16.

Accession Number: 20160203–5219.

Comments Due: 5 p.m. ET 2/24/16.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA16–1–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits Notice of Late System Impact Studies pursuant to Order 890 and 890–A.

Filed Date: 2/1/16.

Accession Number: 20160201–5629

Comments Due: 5 p.m. ET 2/22/16.

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: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02494 Filed 2–8–16; 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 exempt wholesale generator filings:

Docket Numbers: EG16–49–000.

Applicants: Seward Generation, LLC.

Description: Self-Certification of EG or FC of Seward Generation, LLC.

Filed Date: 2/2/16.

Accession Number: 20160202–5243.

Comments Due: 5 p.m. ET 2/23/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1946–011; ER15–622–005; ER15–621–005; ER15–463–005; ER15–2722–001; ER15–110–005; ER14–2871–006; ER14–2382–006; ER14–1777–004; ER13–1586–007; ER13–1485–005; ER11–3861–011; ER11–2639–007; ER10–3310–009; ER10–3299–008; ER10–3286–009; ER10–3253–005; ER10–3251–006; ER10–3250–007; ER10–3249–007; ER10–3245–007; ER10–3244–008; ER10–3243–008; ER10–3240–005; ER10–3239–005; ER10–3237–005; ER10–3233–004; ER10–3232–003; ER10–3231–004; ER10–3230–005; ER10–1992–013.

Applicants: Broad River Energy LLC, Victory Garden Phase IV, LLC, TGP

Energy Management, LLC, Terra-Gen Energy Services, LLC, San Gorgonio Westwinds II, LLC, Ridgetop Energy, LLC, Ridge Crest Wind Partners, LLC, Pacific Crest Power, LLC, ON Wind Energy LLC, Oak Creek Wind Power, LLC, Foote Creek IV, LLC, Foote Creek III, LLC, Foote Creek II, LLC, Coso Geothermal Power Holdings, LLC, Chandler Wind Partners, LLC, Cameron Ridge, LLC, Wheelabrator Westchester, L.P., Wheelabrator South Broward Inc., Wheelabrator Shasta Energy Company Inc., Wheelabrator Saugus Inc., Wheelabrator Ridge Energy Inc., Wheelabrator Portsmouth Inc., Wheelabrator North Andover Inc., Wheelabrator Frackville Energy Company Inc., Wheelabrator Falls Inc., Wheelabrator Bridgeport, L.P., Wheelabrator Baltimore, L.P., New Athens Generating Company, LLC, Millennium Power Partners, L.P., New Harquahala Generating Company, LLC, Empire Generating Co, LLC.

Description: Supplement to October 1, 2015 Notice of Change in Status of the ECP MBR Sellers.

Filed Date: 12/31/15.

Accession Number: 20151231–5407.

Comments Due: 5 p.m. ET 2/24/16.

Docket Numbers: ER10–2839–004.

Applicants: Midland Cogeneration Venture Limited Partnership.

Description: Supplement to June 30, 2015 Updated Market Power Analysis of Midland Cogeneration Venture Limited Partnership.

Filed Date: 1/29/16.

Accession Number: 20160129–5524.

Comments Due: 5 p.m. ET 2/19/16.

Docket Numbers: ER15–2648–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance per Nov 3, 2015 Order re: Fee Proposal Window Effective Date to be effective 2/16/2016.

Filed Date: 2/2/16.

Accession Number: 20160202–5254.

Comments Due: 5 p.m. ET 2/23/16.

Docket Numbers: ER16–498–000.

Applicants: RE Mustang LLC, RE Mustang 3 LLC, RE Mustang 4 LLC, RE Barren Ridge 1 LLC.

Description: Clarification to December 10, 2015 and December 29, 2015 RE Mustang LLC, RE Mustang 3 LLC, RE Mustang 4 LLC and RE Barren Ridge 1 LLC tariff filings.

Filed Date: 2/2/16.

Accession Number: 20160202–5256.

Comments Due: 5 p.m. ET 2/12/16.

Docket Numbers: ER16–872–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2016–02–02_SA 2886 MidAmerican-MidAmerican GIA (J279) to be effective 2/3/2016.

Filed Date: 2/2/16.

Accession Number: 20160202–5197.

Comments Due: 5 p.m. ET 2/23/16.

Docket Numbers: ER16–873–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Revisions to OATT and OA RE Demand Resource CBL to be effective 4/4/2016.

Filed Date: 2/2/16.

Accession Number: 20160202–5199.

Comments Due: 5 p.m. ET 2/23/16.

Docket Numbers: ER16–874–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Amendment to WMPA No. 4244, Queue No. Z1–081 to be effective 7/20/2015.

Filed Date: 2/2/16.

Accession Number: 20160202–5253.

Comments Due: 5 p.m. ET 2/23/16.

Docket Numbers: ER16–875–000.

Applicants: Otter Tail Power Company.

Description: Notice of Termination of Supplement Nos. 1 and 4 (as supplemented) to Rate Schedule No. 171 of Otter Tail Power Company.

Filed Date: 2/2/16.

Accession Number: 20160202–5264.

Comments Due: 5 p.m. ET 2/23/16.

Docket Numbers: ER16–876–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 2974, Queue No. W4–080 to be effective 2/3/2016.

Filed Date: 2/3/16.

Accession Number: 20160203–5054.

Comments Due: 5 p.m. ET 2/24/16.

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: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02493 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–733–000]

LQA, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of LQA, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 22, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's

Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02470 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14276–002–Kentucky; Kentucky River Lock and Dam No. 11 Hydroelectric Project]

FFP Project 92, LLC; Notice of Revised Restricted Service List

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Kentucky State Historic Preservation Officer and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (54 U.S.C. 306108), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the proposed Kentucky River Lock and Dam No. 11 Hydroelectric Project.

On September 30, 2015, Commission staff established a restricted service list for the Kentucky River Lock and Dam No. 11 Hydroelectric Project. Since that time, changes have occurred and therefore, the restricted service list is revised as follows:

Replace ''Lisa C. Baker, Acting THPO, United Keetoowah Band of Cherokee Indians in Oklahoma'' with ''Assistant Chief Joe Bunch, or Representative, United Keetoowah Band of Cherokee Indians in Oklahoma.''

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02507 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–806–000]

Nassau Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Nassau Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02497 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–858–000]

Granite Mountain Solar East, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Granite Mountain Solar East, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 23, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the

eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–02502 Filed 2–8–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9942–11–OECA]

National Environmental Justice Advisory Council; Notification of Public Teleconference and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; public teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see Registration under **SUPPLEMENTARY INFORMATION.** Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required.

DATES: The NEJAC will host a public teleconference meeting on Thursday, February 25, 2016, at 3:00 p.m. Eastern Time. The discussion will focus on EPA's Draft Environmental Justice Primer Framework. This action-oriented educational and training tool is being designed as a resource for port facilities of the perspectives, priorities, and challenges often unique to overburdened, vulnerable communities. The resource materials and process steps are designed to promote successful engagement with nearby communities in decision-making about environmental health and related concerns associated with port-related activities.

Public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Thursday, February 25, 2016 starting at 4:30 p.m. Eastern Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by Midnight, Eastern Time, on Friday, February 19, 2016.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Karen L. Martin, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC2201A), Washington, DC 20460; by telephone at 202–564–0203; via email at *martin.karenl@epa.gov;* or by fax at 202–564–1624. Additional information about the NEJAC is available at: *www.epa.gov/environmentaljustice/nejac.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

Registration

Registrations for the February 25, 2016, pubic teleconference will be processed *http://nejac-teleconference-february-25-2016.eventbrite.com.* Pre-registration is required. Registration for the February 25, 2016, teleconference meeting closes at Midnight, Eastern Time on Friday, February 19, 2016. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also Midnight, Eastern Time Friday, February 19, 2016. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the Friday, February 19, 2016, Midnight deadline. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis.

A. Public Comment

Individuals or groups making remarks during the public comment period will be limited to seven (7) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by registration deadline, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at *martin.karenl@epa.gov.*

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564–0203 or via email at *martin.karenl@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least four working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: February 2, 2016.

Matthew Tejada,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 2016–02568 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9942–22–OEI]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Courtney Kerwin (202) 566–1669, or email at *kerwin.courtney@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1550.10; Conflict of Interest Rule #1 (Renewal); 40 CFR 1552 and 486(c); was approved with change 06/03/2015; OMB Number 2030–0023; expires on 6/30/2018.

EPA ICR Number 2103.05; Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Renewal); was approved without change on 06/16/2015; OMB Control Number 2040–0253; expires on 6/30/2018.

EPA ICR Number 2234.04; 2015 Drinking Water Infrastructure Needs Survey and Assessment (Reinstatement); approved without change 06/08/2015; OMB Control Number 2040–0274; expires 6/30/2018.

EPA ICR Number 1189.25; Disposal of Coal Combustion Residuals from Electric Utilities (Final Rule); 40 CFR 40 CFR 257, subpart D, 260, 261; approved with change 06/29/2015; OMB Control Number 2050–0053; expires 6/30/2018.

EPA ICR Number 1425.10; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases under CERCLA section 123 (Renewal); 40 CFR part 40 CFR 310.2–310.12 and 310, appendix II; approved without change 06/01/2015; OMB Control Number 2050–0077; expires 6/30/2018.

EPA ICR Number 1767.07; NESHAP for Primary Aluminum Reduction Plants (40 CFR part 63, subpart LL)(Renewal); 40 CFR 63, subparts A and LL, approved with change 06/01/2015; OMB Control Number 2060–0360; expires 06/30/2018.

EPA ICR Number 2277.04; NESHAP for Area Sources: Electric Arc Furnace Steelmaking Facilities (Renewal); 40 CFR part 63, subparts A and YYYYY; approved with change 06/03/2015; OMB Control Number 2060–0608; expires 06/30/2018.

EPA ICR Number 1198.10; Chemical-Specific Rules, TSCA section 8(a); 40 CFR 40 CFR 704; approved without change on 06/01/2015; OMB Control Number 2070–0067; expires 06/30/2018.

EPA ICR Number 1741.07; Correction of Misreported Chemical Substances on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory; approved with change on 06/02/2015; OMB Control Number 2070–0145; expires 06/30/2018.

EPA ICR Number 2002.06; Cross-Media Electronic Reporting (Renewal); 40 CFR 3; approved without change on 07/09/2015; OMB Control Number 2025–0003; expires 07/31/2018.

EPA ICR Number 1391.10; Clean Water Act State Revolving Fund Program (Renewal); 40 CFR 35; approved without change on 07/02/2015; OMB Control Number 2040–0118; expires 07/31/2016.

EPA ICR Number 1959.09; National Listing of Fish Advisories (Renewal); approved with change on 07/08/2015; OMB Control Number 2040–0226; expires 07/30/2018.

EPA ICR Number 1774.06; Mobile Air Conditioner Retrofitting Program (Renewal); 40 CFR 82; approved with change 07/15/2015; OMB Control Number 2060–0350; expires 07/30/2018.

EPA ICR Number 1800.07; Information Requirements for Locomotives and Locomotive Engines (Renewal); 40 CFR 92 and 1033; approved with change on 07/20/2015; OMB Control Number 2060–0392; expires 07/30/2018.

Comment Filed

EPA ICR Number 2258.03; PM 2.5 NAAQS Implementation Rule (Proposed Rule); 40 CFR 51; comment filed 06/03/2015.

Courtney Kerwin,

Acting Director, Collections Strategies Division.

[FR Doc. 2016–02542 Filed 2–8–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Wednesday, March 9th, 2016 in the Commission Meeting Room, from 12:30 p.m. to 4 p.m. at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

DATES: Wednesday, March 9th, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: This is the first meeting of the Technological Advisory Council for 2016. At its prior meeting on December 9th, 2015, the Council had discussed possible work initiatives for 2016. These initiatives have been discussed in the interim within the FCC, with the TAC chairman, as well as with individual TAC members. At the March meeting, the FCC Technological Advisory Council will discuss its proposed work program for 2016. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live/.* The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 2–A665, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed

description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–02430 Filed 2–8–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1084]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 11, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,621 respondents; 574,468 responses.

Estimated Time per Response: 1 minute (.017 hours) to 20 minutes (.33 hours).

Frequency of Response: Recordkeeping and annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these information requirements are found in sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r).

Total Annual Burden: 47,693 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is not an issue as individuals and/or households are not required to provide personally identifiable information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the 2005 Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (*2005 Report and Order*), CG Docket No. 02–386, FCC 05–29, which was released on February 25, 2005, the Commission adopted rules governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The Commission concluded that mandatory, minimum standards are needed in light of record evidence demonstrating that information needed by carriers to execute customer requests and properly bill customers is not being consistently provided by all LECs and IXCs. Specifically, the 2005 Report and Order requires LECs to supply customer account information to IXCs when: (1) The LEC places an end user on, or removes an end user from, an IXC's network; (2) an end user presubscribed to an IXC makes certain changes to her account information via her LEC; (3) an IXC requests billing name and address information for an end user who has usage on an IXC's network but for whom the IXC does not have an existing account; and (4) a LEC rejects an IXC-initiated PIC order. The *2005 Report and Order* required IXCs to notify LECs when an IXC customer informs an IXC directly of the customer's desire to change IXCs. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require the exchange of customer account information between LECs. In December 2007, the Commission declined to adopt mandatory LEC-to-LEC data exchange requirements.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–02431 Filed 2–8–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, February 11, 2016 At 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes for December 17, 2015 and January 14, 2016

Draft Advisory Opinion 2015–14: Hillary for America

Draft Advisory Opinion 2015–16: Niger Innis for Congress

Audit Division Recommendation Memorandum on the Oklahoma Democratic Party (ODP) (A12–06)

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–02593 Filed 2–5–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 16–02]

D.F. Young, Inc. v. NYK Line (North America) Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by D.F. Young, Inc., hereinafter ''Complainant,'' against NYK Line (North America) Inc., hereinafter ''Respondent.'' Complainant states that it is an ocean transportation intermediary licensed by the Commission and a Pennsylvania corporation. Complainant alleges that Respondent is a New York corporation and a common carrier of goods by water.

Complainant alleges that Respondent has violated the Shipping Act, 46 U.S.C. 41102, and the Commission's regulations at 46 CFR 515.42 ''by refusing to compensate Complainant for the freight forwarding services performed on Ford [Motor Company] shipments placed on vessels owned/and or operated by Respondent and/or its agents or affiliates, for which Respondent received freight charges, according to the terms of the Respondent's applicable tariffs . . . .''

Complainant seeks an award of reparations in the amount of $252,776.89, plus interest and attorneys fees, ''a payment of additional amounts, not exceeding twice the amount of any award for injuries'' if violation of 46 U.S.C. 41103(3) be shown, and ''other such relief or award as the FMC shall determine.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/16–02.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by February 3, 2017, and the final decision of the Commission shall be issued by August 17, 2017.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–02453 Filed 2–8–16; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145; Docket 2016–0053; Sequence 7]

Information Collection; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning use of the Data Universal Numbering System (DUNS) as primary contractor identification. The DUNS number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment.

DATES: Submit comments on or before April 11, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification'' on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification.

Instructions: Please submit comments only and cite Information Collection 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA 202–501–1448 or via email at *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of the micro-purchase threshold to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulation (FAR) provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations they expect will result in contracts in excess of the micro-purchase threshold and do not contain FAR 52.204–7, Central Contractor Registration. The majority of offerors submit their DUNS through CCR as required by FAR 52.204–7, and not under the FAR provision at 52.204–6.

B. Annual Reporting Burden

Respondents: 22,070.
Responses per Respondent: 3.
Annual Responses: 66,210.
Hours per Response: .1666.
Total Burden Hours: 11,031.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical

utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: February 4, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–02517 Filed 2–8–16; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2016–01; Docket No. 2016–0002; Sequence No. 2]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Advisory Committee Meeting and Conference Calls

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Meeting Notice.

SUMMARY: Notice of this meeting and these conference calls is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). This notice provides the agenda and schedule for the April 28, 2016 meeting of the Green Building Advisory Committee (the Committee) and schedule for a series of conference calls, supplemented by Web meetings, for a new task group of the Committee. The meeting is open to the public and the site is accessible to individuals with disabilities. The conference calls are open for the public to listen in. Interested individuals must register to attend as instructed below under **SUPPLEMENTARY INFORMATION.**

DATES: *Meeting date:* The meeting will be held on Thursday, April 28, 2016, starting at 9:00 a.m. Eastern Daylight Time (EDT), and ending no later than 3:30 p.m.

Green Leasing task group conference call dates: The Green Leasing task group will hold recurring, weekly conference calls on Tuesdays beginning March 1, 2016 through April 26, 2016 from 2:00 p.m. to 3:00 p.m., (EDT).

FOR FURTHER INFORMATION CONTACT: Mr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW., Washington, DC 20405, telephone 202–219–1121 (**Note:** This is not a toll-free number). Additional information about the Committee, including meeting materials and updates on the task groups and their schedules, will be available on-line at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance and Public Comment: Contact Mr. Ken Sandler at *ken.sandler@gsa.gov,* to register to attend the meeting and/or listen in to any or all of these conference calls. To attend the meeting and/or conference calls, submit your full name, organization, email address, and phone number. Requests to attend the April 28, 2016 meeting must be received by 5:00 p.m., (EDT) on Wednesday, April 20, 2016. Requests to listen in to the calls must be received by 5:00 p.m., (EDT) on Friday, February 26, 2016 (GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site in advance of calls is recommended.)

Contact Ken Sandler at *ken.sandler@gsa.gov* to register to comment during the April 28, 2016 meeting public comment period. Registered speakers/organizations will be allowed a maximum of 5 minutes each, and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5:00 p.m., (EDT) on Wednesday, April 20, 2016. Written comments also may be provided to Mr. Sandler at *ken.sandler@gsa.gov* by the same deadline.

Background: The Administrator of the General Services Administration established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118), pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee advises GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices. The Committee reviews strategic plans, products, and activities of the Office of Federal High-Performance Green Buildings, and provides advice regarding how the Office can accomplish its mission most effectively.

The *Green Leasing* task group will pursue the Committee's motion to ''provide recommendations to improve federal government leasing language and requirements regarding . . . sustainability goals.''

The conference calls will allow the task group to coordinate the development of consensus recommendations to the full Committee, which will in turn decide whether to proceed with formal advice to GSA based upon these recommendations. The task group will provide recommendations in support of GSA's development of model commercial leasing provisions, a requirement of the Energy Efficiency Improvement Act of 2015 (42 U.S.C. 17062).

April 28, 2016 Meeting Agenda:

- Welcome, Introductions, Updates & Plans for Today
- Portfolio Prioritization: Task Group Report & Discussion
- Green Leasing: Task Group Report & Discussion
- Working Lunch (with Presentation)
- Energy Use Index: Task Group Report & Discussion
- Discussion of the Committee's Overall Direction
- Topics Proposed by Committee Members
- Public Comment Period
- Closing comments
- Adjourn

Detailed agendas, background information, and updates for the meeting and conference calls will be posted on GSA's Web site at *http://www.gsa.gov/gbac.*

Meeting Access: The Committee will convene its April 28, 2016 meeting at the General Services Administration building, Room 6159, 1800 F Street NW., Washington, DC 20405, and the site is accessible to individuals with disabilities.

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, General Services Administration.

[FR Doc. 2016–02518 Filed 2–8–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR), Lead Poisoning Prevention (LPP) Subcommittee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR) announces the following meeting of the aforementioned subcommittee:

Time and Date: 12:00 p.m.–1:45 p.m., EST, February 9, 2016.

Place: This meeting will be held by teleconference. To participate in the teleconference, please dial 1–877–315–6535 Passcode: 383520.

Status: The meeting is open to the public, limited only by the conference lines available. The public is welcome to participate during the public comment period, which is tentatively scheduled from 1:30 p.m. to 1:45 p.m.

This **Federal Register** Notice is being published less than 15 days before the meeting because of the urgent nature of recent events involving the Flint, Michigan water contamination with lead. CDC is convening a meeting of the Lead Subcommittee of the Board of Scientific Counselors to initiate discussion of public health measures and assessments needed in response to this event.

Purpose: The subcommittee will propose strategies and options to the Board of Scientific Counselors (BSC) on ways to prioritize NCEH/ATSDR's activities, improve health outcomes, and address health disparities as it relates to lead exposures. The subcommittee will deliberate on ways to evaluate lead exposure and how to best conduct health evaluations through exposure and epidemiologic studies. Subcommittee proposals on lead prevention practices and national lead poisoning prevention efforts will be provided to the Board of Scientific Counselors for deliberation and possible adoption as formal recommendations to NCEH/ATSDR.

Matters for Discussion: Agenda items will include the following: Blood lead testing and health surveillance strategies for the residents of Flint, Michigan, including methodological approaches for conducting retrospective and prospective assessments of blood lead levels and associated health outcomes.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–45, Chamblee, Georgia 30345; telephone 770/488–0575, Fax: 770/488–3377; Email: *smalcom@cdc.gov.*

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Gary Johnson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–02574 Filed 2–4–16; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0600]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

CDC Model Performance Evaluation Program (MPEP) for Mycobacterium tuberculosis Drug Susceptibility Testing (OMB Control No. 0920–0600, Expires 5/31/2016)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of the continuing effort to support domestic public health objectives for treatment of tuberculosis (TB), prevention of multi-drug resistance, and surveillance programs, CDC is requesting approval for an extension of three years from the Office of Management and Budget to continue information collection from participants in the Model Performance Evaluation Program for Mycobacterium Tuberculosis Susceptibility Testing. Extension of this information collection will not require changes in the scope of the study, methodology, information collection instruments, or burden on the respondents.

While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. To reach the goal of eliminating TB, the Model Performance Evaluation Program for Mycobacterium Tuberculosis Drug Susceptibility Testing is used to monitor and evaluate performance and practices among national laboratories performing M. tuberculosis susceptibility testing. Participation in this program is one way laboratories can ensure high-quality laboratory testing, resulting in accurate and reliable testing results.

Extension of this information collection provides CDC with an

evaluation program to assess the ability of the laboratories to test for drug resistant M. tuberculosis strains. Laboratories also have a self-assessment tool to aid in optimizing their skills in susceptibility testing. The information obtained from the laboratories on susceptibility practices and procedures is used to establish variables related to good performance, assessing training needs, and aid with the development of practice standards.

Participants in this program include domestic clinical and public health laboratories. Data collection from laboratory participants occurs twice per year. The data collected in this program will include the susceptibility test results of primary and secondary drugs, drug concentrations, and test methods performed by laboratories on a set of performance evaluation (PE) samples. The PE samples are sent to participants twice a year. Participants also report demographic data such as laboratory type and the number of tests performed annually.

There is no cost to respondents to participate other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Domestic Laboratory	Participant Biosafety Compliance Letter of Agreement.	93	2	5/60
	MPEP *Mycobacterium tuberculosis* Results Worksheet.	93	2	30/60
	Online Survey Instrument	93	2	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–02519 Filed 2–8–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period extending through February 1, 2018.

Contact Person For More Information: Carmen Villar, M.S.W., Designated Federal Officer, Advisory Committee to the Director, CDC, 1600 Clifton Road NE., Mailstop D14, Atlanta, Georgia 30333, Telephone 404–639–7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–02480 Filed 2–8–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS Computer Match No. 2016–12; HHS Computer Match No. 1604; SSA Computer Match No. 1097–1899]

Privacy Act of 1974

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the re-establishment of a CMP that CMS plans to conduct with the Social Security Administration (SSA).

DATES: *Effective Dates:* Comments are invited on all portions of this notice. Public comments are due 30 days after publication. The matching program will become effective no sooner than 40 days after the report of the matching program is sent to the Office of Management and Budget (OMB) and Congress, or 30 days after publication in the **Federal Register**, whichever is later.

ADDRESSES: The public should send comments to: CMS Privacy Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Enterprise Information, CMS, Room N1–24–08, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kane, Acting Director, Verifications Policy & Operations Division, Eligibility and Enrollment Policy and Operations Group, Center for Consumer Information and Insurance Oversight, CMS, 7501 Wisconsin Avenue, Bethesda, MD 20814, Office Phone: (301) 492–4418, Facsimile: (443) 380–5531, E-Mail: *Elizabeth.Kane@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records (SOR) are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

This matching program meets the requirements of the Privacy Act of 1974, as amended.

Celeste Dade-Vinson,

Health Insurance Specialist, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2016–12

HHS COMPUTER MATCH NO. 1604

SSA COMPUTER MATCH NO. 1097–1899

NAME:

''Computer Matching Agreement between the Department of Health and Human Services, Centers for Medicare & Medicaid Services and the Social Security Administration for Determining Enrollment or Eligibility for Insurance Affordability Programs under the Patient Protection and Affordable Care Act''

SECURITY CLASSIFICATION:

Unclassified

PARTICIPATING AGENCIES:

Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and the Social Security Administration (SSA)

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

Sections 1411 and 1413 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the ACA) require the Secretary of HHS to establish a program for determining eligibility for certain state health subsidy programs, and certifications of Exemption; and authorize use of secure, electronic interfaces and an on-line system for the verification of eligibility.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of the Computer Matching Agreement (CMA) is to re-establish the terms, conditions, safeguards, and procedures under which SSA will disclose information to CMS in connection with the administration of state health subside programs under the ACA and its implementing regulations. SSA will provide data to CMS, and CMS will use SSA data needed to make initial eligibility determinations, eligibility redeterminations and renewal decisions, including appeal determinations, for state health subsidy programs and certifications of exemption. State health subsidy programs include:

1. Qualified Health Plan through an Exchange established under the ACA,

2. Advance payments of the premium tax credit and cost sharing reductions,

3. Medicaid,

4. Children's Health Insurance Program, and

5. Basic Health Program.

As set forth in the CMA, SSA will provide CMS the following information when relevant: (1) Social Security number (SSN) verifications, (2) a death indicator, (3) an indicator of a finding of disability by SSA under title II of the Social Security Act, (4) prisoner data, (5) monthly and annual Social Security benefit information under title II of the Social Security Act, (6) quarters of coverage, and (7) confirmation that an allegation of citizenship is consistent with SSA records.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

The matching program will be conducted with data maintained by CMS in the Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, as amended, published at 78 FR 8538 (Feb. 6, 2013), 78 FR 32256 (May 29, 2013) and 78 FR 63211 (October 23, 2013).

The matching program will also be conducted with data maintained by SSA in the following SORs:

- Master Files of SSN Holders and SSN Applications, SSA/OEEAS, 60–0058, 75 FR 82121 (December 29, 2010), as amended 78 FR 40542 (July 5, 2013);
- Prisoner Update Processing System (PUPS), SSA/OPB, 60–0269, 64 FR 11076 (March 8, 1999), as amended 72 FR 69723 (December 10, 2007) and 78 FR 40542 (July 5, 2013);
- Master Beneficiary Record, SSA/ORSIS, 60–0090, 71 FR 1826 (January 11, 2006), as amended 72 FR 69723 (December 10, 2007) and 78 FR 40542 (July 5, 2013);
- Earnings Recording and Self-Employment Income System, SSA/OEEAS, 60–0059, 71 FR 1819(January 11, 2006), as amended 78 FR 40542 (July 5, 2013).

INCLUSIVE DATES OF THE MATCH:

The CMP will become effective no sooner than 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2016–02527 Filed 2–8–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meetings

AGENCY: Office of Head Start (OHS), Administration for Children and Families, HHS.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of three 1-day Tribal Consultation Sessions to be held between the Department of Health and Human Services (HHS), Administration for Children and Families, OHS leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, section 640(l)(4)].

DATES:

March 7, 2016, from 1:30 p.m. to 5:00 p.m.

June 8, 2016, from 1:30 p.m. to 5:00 p.m.

August 8, 2016, from 1:00 p.m. to 5:00 p.m.

Locations:

- March 7, 2016—Hotel Albuquerque at Old Town, 800 Rio Grande Blvd. NW., Albuquerque, New Mexico 87104.
- June 8, 2016—Arlington Renaissance Capital View Hotel, 2800 South Potomac Avenue, Arlington, Virginia 22202.
- August 8, 2016—Northern Quest Resort & Casino, 100 North Hayford Road, Airway Heights, WA 99001.

FOR FURTHER INFORMATION CONTACT: Angie Godfrey, Regional Program Manager, Region XI/AIAN, Office of Head Start, email *Angie.Godfrey@acf.hhs.gov,* or phone (202) 205–5811. Additional information and online

meeting registration is available at: *http://eclkc.ohs.acf.hhs.gov/hslc/hs/calendar/tc2016.*

SUPPLEMENTARY INFORMATION: HHS announces OHS Tribal Consultations for leaders of Tribal Governments operating Head Start and Early Head Start programs. The agenda for the scheduled OHS Tribal Consultations in Albuquerque, New Mexico, Arlington, Virginia, and Spokane, Washington, will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian and Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in the 2015 OHS Tribal Consultations.

The Consultation Sessions will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C. 9835, section 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the tribe. Tribal Governments must submit the designee letter at least 3 days in advance of the Consultation Session to Angie Godfrey at *Angie.Godfrey@acf.hhs.gov.* Other representatives of tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of each Consultation Session will be prepared and made available within 45 days of the Consultation Sessions to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Angie Godfrey at *Angie.Godfrey@acf.hhs.gov* either prior to each Consultation Session or within 30 days after each meeting. OHS will summarize oral testimony and comments from the Consultation Session in each report without attribution, along with topics of concern and recommendations.

Dated: February 2, 2016.

Blanca E. Enriquez,

Director, Office of Head Start.

[FR Doc. 2016–02580 Filed 2–8–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–M–3256, FDA–2015–M–3257, FDA–2015–M–3258, FDA–2015–M–3376, FDA–2015–M–3377, FDA–2015–M–3516, FDA–2015–M–3516, FDA–2015–M–3519, FDA–2015–M–3520, FDA–2015–M–3521, FDA–2015–M–4013, FDA–2015–M–4014, FDA–2015–M–4015, FDA–2015–M–4016, FDA–2015–M–4017, FDA–2015–M–4018, FDA–2015–M–4069, FDA–2015–M–4343, FDA–2015–M–4344, FDA–2015–M–4434, FDA–2015–M–4728, FDA–2015–M–4947, and FDA–2015–M–4951]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

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 Nos. FDA–2015–M–3256, FDA–2015–M–3257, FDA–2015–M–3258, FDA–2015–M–3376, FDA–2015–M–3377, FDA–2015–M–3516, FDA–2015–M–3516, FDA–2015–M–3519, FDA–2015–M–3520, FDA–2015–M–3521, FDA–2015–M–4013, FDA–2015–M–4014, FDA–2015–M–4015, FDA–2015–M–4016, FDA–2015–M–4017, FDA–2015–M–4018, FDA–2015–M–4069, FDA–2015–M–4343, FDA–2015–M–4344, FDA–2015–M–4434, FDA–2015–M–4728, FDA–2015–M–4947, and FDA–2015–M–4951 for ''Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications.'' 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: Joshua Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1650, Silver Spring, MD 20993–0002, 301–796–6524.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with sections 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from October 1, 2015, through December 31, 2015. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM OCTOBER 1, 2015, THROUGH DECEMBER 31, 2015

PMA No., Docket No.	Applicant	Trade name	Approval date
P150010, FDA–2015–M–3256	Fidia Farmaceutici, S.p.A.	HYMOVIS®	8/28/2015
P100006, FDA–2015–M–3257	Biomimetic Therapeutics, LLC	Augment® Bone Graft	9/1/2015
P140005, FDA–2015–M–3258	OrthogenRx, Inc.	GenVisc 850®	9/2/2015
P140015, FDA–2015–M–3376	Tandem Diabetes Care, Inc.	t:slim G4 Insulin Pump With Dexcom G4 Platinum CGM.	9/8/2015
P140016, FDA–2015–M–3377	Cook Medical Inc.	Zenith Alpha Thoracic Endovascular Graft	9/15/2015
P070015/S128, FDA–2015–M–3516	Abbott Vascular	XIENCE V and XIENCE nano Everolimus Eluting Coronary Stent System.	9/23/2015
P110019/S075, FDA–2015–M–3516	Abbott Vascular	XIENCE PRIME and XIENCE PRIME LL Everolimus Eluting Coronary Stent System, XIENCE Xpedition, XIENCE Xpedition SV and XIENCE Xpedition LL Everolimus Eluting Coronary Stent System, and XIENCE Alpine Everolimus Eluting Coronary Stent System.	9/23/2015
P050047/S044, FDA–2015–M–3519	Allergan	Juvéderm Ultra XC injectable gel	9/30/2015
P120010/S046, FDA–2015–M–4013	Medtronic, Inc.	MiniMed 530G System with Threshold Suspend featuring SmartGuard™ technology.	10/2/2015
P150003, FDA–2015–M–4014	Boston Scientific Corporation	SYNERGY™ Everolimus-Eluting Platinum Chromium Coronary Stent System.	10/2/2015
P150013, FDA–2015–M–3520	Dako North America, Inc.	PD–L1 IHC 22C3 pharmDx	10/2/2015
P100034/S013, FDA–2015–M–4015	Novocure, Ltd.	Optune™ (Formerly the NovoTTF–100A System)	10/5/2015
P150025, FDA–2015–M–4016	Dako North America, Inc.	PD–L1 IHC 28–8 pharmDx	10/9/2015
P130009/S034, FDA–2015–M–4017	Edwards Lifesciences, LLC	Edwards SAPIEN XT™ Transcatheter Heart Valve, model 9300TFX, and Accessories.	10/9/2015
P150014, FDA–2015–M–4069	Roche Molecular Systems, Inc.	cobas® HBV	10/14/2015
P150015, FDA–2015–M–4018	Roche Molecular Systems, Inc.	cobas® HCV	10/14/2015
P140019, FDA–2015–M–4343	Cerapedics, Inc.	i-FACTOR™ Peptide Enhanced Bone Graft	11/3/2015
P120019/S007, FDA–2015–M–4344	Roche Molecular Systems, Inc.	cobas® EGFR Mutation Test v2	11/13/2015
P130028, FDA–2015–M–4434	Algostim, LLC	Algovita Spinal Cord Stimulation System	11/20/2015
P150019, FDA–2015–M–4728	Medtronic MiniMed	Paradigm Real-Time Revel System	12/7/2015
P010030/S056, FDA–2015–M–3521	ZOLL Manufacturing Corporation	LifeVest Wearable Cardioverter Defibrillator Models 3000, 3100, and 4000.	12/17/2015
P140030, FDA–2015–M–4947	Biotronik, Inc.	Astron Peripheral Self-Expanding Nitinol Stent System.	12/17/2015
P980044/S027, FDA–2015–M–4951	Seikagaku Corporation	VISCO–3™	12/21/2015

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm.*

Dated: February 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–02522 Filed 2–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0179]

Training Program for Regulatory Project Managers; Information Available to Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Drug Evaluation and Research (CDER) is announcing the continuation of the Regulatory Project Management Site Tours and Regulatory Interaction Program (the Site Tours Program). The purpose of this document is to invite pharmaceutical companies interested in participating in this program to contact CDER.

DATES: Pharmaceutical companies may submit proposed agendas to the Agency by April 11, 2016.

FOR FURTHER INFORMATION CONTACT: Dan Brum, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5480, Silver Spring, MD 20993–0002, 301–796–0578, *dan.brum@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

An important part of CDER's commitment to make safe and effective drugs available to all Americans is optimizing the efficiency and quality of the drug review process. To support this primary goal, CDER has initiated various training and development programs to promote high performance in its regulatory project management staff. CDER seeks to significantly enhance review efficiency and review quality by providing the staff with a better understanding of the pharmaceutical industry and its operations. To this end, CDER is continuing its training program to give regulatory project managers the opportunity to tour pharmaceutical facilities. The goals are to provide firsthand exposure to industry's drug development processes, and a venue for sharing information about project management procedures (but not drug-specific information) with industry representatives.

II. The Site Tours Program

In this program, over a 2- to 3-day period, small groups (five or less) of regulatory project managers, including a senior level regulatory project manager, can observe operations of pharmaceutical manufacturing and/or packaging facilities, pathology/toxicology laboratories, and regulatory affairs operations. Neither this tour nor any part of the program is intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but is meant rather to improve mutual understanding and to provide an avenue for open dialogue. During the Site Tours Program, regulatory project managers will also participate in daily workshops with their industry counterparts, focusing on selective regulatory issues important to both CDER staff and industry. The primary objective of the daily workshops is to learn about the team approach to drug development, including drug discovery, preclinical evaluation, tracking mechanisms, and regulatory submission operations. The overall benefit to regulatory project managers will be exposure to project management, team techniques, and processes employed by the pharmaceutical industry. By participating in this program, the regulatory project manager will grow professionally by gaining a better understanding of industry processes and procedures.

III. Site Selection

All travel expenses associated with the Site Tours Program will be the responsibility of CDER; therefore, selection will be based on the availability of funds and resources for each fiscal year. Selection will also be based on firms having a favorable facility status as determined by FDA's Office of Regulatory Affairs District Offices in the firms' respective regions. Firms interested in offering a site tour or learning more about this training opportunity should respond by submitting a proposed agenda to Dan Brum directly (see **DATES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: February 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–02515 Filed 2–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0395]

Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays.'' This guidance document discusses information to be included in premarket notifications for zonisamide or lamotrigine assays.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–D–0395 for ''Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays; Guidance for Industry and Food and Drug Administration Staff; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Courtney Lias, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 4626, Silver Spring, MD 20993–0002, 301–796–5458.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this guidance document to describe its current thinking concerning issues that should be addressed in premarket notifications for assays intended to quantitate the anti-seizure drugs lamotrigine and zonisamide in serum. Some of the general concepts in this guidance may also be helpful in preparing 510(k) submissions for other therapeutic drug assays previously cleared by FDA, and classified within 21 CFR 862, subpart D. The draft guidance was available for comment on August 6, 2010. The comment period closed on November 4, 2010. No comments relating to the specific recommendation in the guidance were received. Minor revisions to the guidance have been made for clarifications and updates.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on Premarket Notifications for Lamotrigine and Zonisamide Assays. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Recommendations for Premarket Notifications for Lamotrigine and Zonisamide Assays,'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1654 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB Control No. 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB Control No. 0910–0485.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: February 4, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–02516 Filed 2–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1504]

Independent Assessment of the Process for the Review of Device Submissions; Implementation Evaluation Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing Booz Allen Hamilton's final evaluation report submitted as part of their independent assessment of the process for the review of medical device submissions. The evaluation is part of the FDA performance commitments relating to the Medical Device User Fee Amendments of 2012 (MDUFA III), which reauthorized device user fees for fiscal years 2013 through 2017. The assessment is described in section V, Independent Assessment of Review Process Management, of the commitment letter entitled ''MDUFA Performance Goals and Procedures'' (MDUFA III Commitment Letter). The evaluation has been conducted as the second phase (Phase 2) and is the last of a series of deliverables, as outlined in the contract statement of work.

FOR FURTHER INFORMATION CONTACT: Raphaela Simon, Office of Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3379, Silver Spring, MD 20993–0002, 301–796–9169, *Raphaela.Simon@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, President Obama signed into law the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA).[1] Title II of FDASIA is the Medical Device User Fee Amendments of 2012 (MDUFA III), which gives FDA the authority to collect device user fees from industry for fiscal years 2013 through 2017. MDUFA III took effect on October 1, 2012, and will continue through September 30, 2017.

Device user fees were first established by Congress in 2002. Medical device companies pay fees to FDA when they register their establishment and list their devices with the Agency, whenever they submit an application or a notification to market a new medical device in the United States, and for certain other types of submissions. Under MDUFA III, FDA is authorized to collect user fees that will total approximately $595 million (plus adjustments for inflation) over 5 years. With this additional funding, FDA will be able to hire more than 200 full-time-equivalent workers over the course of MDUFA III. In exchange, FDA has committed to meet certain performance goals outlined in the MDUFA III Commitment Letter.[2]

II. Assessment of FDA's Process for the Review of Device Submissions

Section V of the MDUFA III Commitment Letter states that FDA and the device industry will participate in a comprehensive assessment of the process for the review of device applications. The assessment will include consultation with both FDA and industry. The assessment will be conducted in two phases by a private, independent consulting firm, under contract with FDA, that is capable of performing the technical analysis, management assessment, and program evaluation tasks required to address the assessment as described in the MDUFA III Commitment Letter.

FDA awarded the contract in June 2013 to the consulting firm Booz Allen Hamilton. Findings on high-priority recommendations (*i.e.*, those likely to have a significant impact on review times) were published in December 2013.[3] Final comprehensive findings and recommendations were scheduled to be published within 1 year of the contract award and are included in the report available at *www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM426392.pdf*. FDA agreed to publish an implementation plan within 1 year of the final findings and recommendations. The final implementation plan, ''Plan of Action,'' was published December 2014 and is available at *www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM426392.pdf*. Examination of the final comprehensive findings and recommendations report led FDA to conclude that the recommendations could be expanded to further enhance the efficiency of premarket reviews. Those actions were also outlined in the Plan of Action. To distinguish actions in direct response to the recommendations from additional actions to further improve the premarket review process, FDA used a ''Stage'' approach. In the Plan of Action ''Stage 1'' actions directly addressed the recommendations in the independent assessment and ''Stage 2'' actions outlined additional long-term actions the Agency intended to implement to further enhance the premarket review process. In addition, FDA has publicly stated in the ''Plan of Action'' that the Agency intended to complete all Stage 1 actions by December 31, 2015.

For Phase 2 of the independent assessment, the contractor evaluated the implementation of recommendations, described under Stage 1 in the ''Plan of Action,'' and is publishing its written assessment [4] no later than February 1, 2016.

FDA has implemented all Stage 1 actions outlined in the Plan of Action, and incorporated the resulting enhancements into the management of the premarket review program. Resources permitting, the Center for Devices and Radiological Health will continue to implement Stage 2 actions. FDA will monitor implemented improvements for accomplishment of intended results and the process for the review of device submissions for additional improvement opportunities.

Dated: February 4, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–02545 Filed 2–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0270]

Display Devices for Diagnostic Radiology; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Display Devices for Diagnostic Radiology''. This draft guidance document provides recommendations for the types of information you should provide in your premarket notification submission (510(k)) for display devices intended for diagnostic radiology with the assigned product code PGY. This guidance, when finalized, will replace a previously issued final guidance entitled ''Display Accessories for Full-Field Digital

[1] *https://www.gpo.gov/fdsys/pkg/PLAW-112publ144/pdf/PLAW-112publ144.pdf.*

[2] *www.fda.gov/downloads/MedicalDevices/NewsEvents/WorkshopsConferences/UCM295454.pdf.*

[3] *www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/Overview/MDUFAIII/UCM378202.pdf.*

[4] *http://www.fda.gov/downloads/ForIndustry/UserFees/MedicalDeviceUserFee/UCM484146.pdf.*

Mammography Systems-Premarket Notification (510(k)) Submissions,'' issued on May 30, 2008. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 9, 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–2016–D–0270 for ''Display Devices for Diagnostic Radiology; Draft Guidance for Industry and Food and Drug Administration Staff; Availability''. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Display Devices for Diagnostic Radiology'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Mary Pastel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4312, Silver Spring, MD 20993–0002, 301–796–6887.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance, when finalized, will apply to display devices intended for diagnostic radiology as identified in section III ''Scope'' of the guidance, and currently classified under 21 CFR 892.2050 as class II devices according to section 513(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360c(a)(1)) with the assigned product code PGY. This draft guidance is intended to assist industry in preparing a 510(k) for display devices intended for use in diagnostic radiology. This draft guidance provides recommendations for the types of information to provide in 510(k) submissions for display devices intended for diagnostic radiology. This information supplements the requirements for a 510(k) submission found in 21 CFR part 807, subpart E, as well as recommendations provided in other FDA guidance documents concerning the specific content of a 510(k) submission.

This guidance, when finalized, will apply to workstation medical image displays for diagnostic radiology. These devices are classified as class II devices that are intended to be used in controlled viewing conditions to display and view digital images for primary image interpretation. Display devices for diagnostic radiology may also be referred to as soft-copy displays or medical grade monitors.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on display devices for diagnostic radiology. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from

the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Display Devices for Diagnostic Radiology'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500022 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807 have been approved under OMB control number 0910–0120 and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

Dated: February 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–02521 Filed 2–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–4040–New–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before March 10, 2016.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.Collection Clearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–OS–4040–New–30D for reference.

Information Collection Request Title: DATA Act Sec. 5. ''Simplifying Federal Award Reporting'' Grants Pilot

Abstract: Public Law 113–101, The Digital Accountability and Transparency Act of 2014 (DATA Act) expands the Federal Funding Accountability and Transparency Act of 2006 by increasing accountability and transparency in Federal spending. Section 5 of the DATA Act (''Sec. 5. Simplifying Federal Award Reporting'') tasks the Director of the Office of Management and Budget (OMB) to establish a pilot program (Sec. 5 (b)).

OMB has designated the Department of Health and Human Services (HHS) as the executing agent of the pilot program. Within HHS, the DATA Act Program Management Office (PMO) (DAP) has been established under the Office of the Assistant Secretary for Financial Resources (ASFR) in order to implement this pilot program. ASFR/DAP, in coordination with Grants.gov, is requesting a generic clearance for the purpose of conducting tests under the pilot program to obtain qualitative and quantitative data and gain an understanding of the burden imposed on Federal recipients.

The DAP has designed several test models to evaluate recipient burden and assess quality of data. The goal of these test models is to determine whether new technology, data standards, processes, and forms aid in reducing recipient burden and increase the accuracy and quality of the data submitted. Under this clearance, a variety of methods (surveys, focus groups, etc.) could be used to collect data, with the exact nature of the questions currently undetermined. DAP expects these questions to include, but not be limited to, topics pertaining to the Standard Form (SF) 424, the Consolidated Federal Financial Reports, and the expanded Single Audit form (SF–SAC). If this data is not collected, the requirements of the DATA Act Section 5 pilot will not be met. The types of collections that this generic clearance covers include, but are not limited to:

- Surveys,
- Focus Groups,
- Other qualitative methods such as interviews, small discussion groups, and case studies.

Likely Respondents: Recipients of Federal contracts, grants, and sub-awards.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Estimated annual reporting burden				
Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Surveys, Focus Groups, and other qualitative methods	300	1	56.25	16,875
Total	300			16,875

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2016–02472 Filed 2–8–16; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; TRAINING.

Date: March 17, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: February 3, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02459 Filed 2–8–16; 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 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 Institute of Allergy and Infectious Diseases Special Emphasis Panel, Investigator Initiated Extended Clinical Trial (R01).

Date: March 2, 2016.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Zhuqing (Charlie) Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3G41B National Institutes of Health/NIAID, 5601 Fishers Lane, MSC9823, Bethesda, MD 20892–9823, (240) 669–5068, *zhuqing.li@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications (P01).

Date: March 3, 2016.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 4C100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Uday K. Shankar, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room # 3G21B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5051, *uday.shankar@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: February 4, 2016

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02532 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Transition to Independence Review Committee.

Time: March 3–4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 3, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02457 Filed 2–8–16; 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 meetings of the Board of Scientific Counselors for Basic Sciences, National Cancer Institute and the Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences, National Cancer Institute.

Date: March 7, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Building 31, C-Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mehrdad Tondravi, Ph.D., Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W302, Rockville, MD 20850, 240–276–5660, *tondravim@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

Date: March 8, 2016.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, *wojcikb@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: *February 4, 2016.*

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02534 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications—Neurosciences.

Date: March 11, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health—NIAAA, 5635 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications—Clinical, Behavioral and Epidemiological Studies.

Date: March 14, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health—NIAAA, 5635 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications—Biomedical Sciences.

Date: March 16, 2016.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health—NIAAA, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: *February 4, 2016.*

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02539 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The Use of Chimpanzees in NIH-Supported Research

SUMMARY: This notice provides information on the National Institutes of Health's (NIH) reassessment of the need to maintain a colony of 50 chimpanzees for future research and decision to no longer maintain a chimpanzee colony for research. This notice also provides information on conforming updates and procedures related to this action.

FOR FURTHER INFORMATION CONTACT: The Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, National Institutes of Health at *dpcpsi@od.nih.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2015, the NIH announced it will no longer maintain a colony of 50 chimpanzees for future research and that all NIH-owned chimpanzees that reside outside the federal sanctuary system operated by Chimp Haven, Keithville, Louisiana, are eligible for retirement. Relocation of the chimpanzees to the federal sanctuary system will be conducted as space is available and on a timescale that will allow for optimal transition of each individual chimpanzee with careful consideration of their welfare, including their health and social grouping. See the NIH Director's statement at *https://www.nih.gov/about-nih/who-we-are/nih-director/statements/nih-will-no-longer-support-biomedical-research-chimpanzees.* Consistent with this decision, the NIH is limiting its future support for research using chimpanzees to that which would be permissible in the federal sanctuary system under the Chimpanzee Health Improvement, Maintenance and Protection (CHIMP) Act and the implementing regulations at 42 CFR part 9. Such research must either be noninvasive behavioral studies or medical studies based on information collected during the course of normal veterinary care that is provided for the benefit of the chimpanzee, provided that any such study involves minimal physical and mental harm, pain, distress, and disturbance to the

chimpanzee and the social group in which the chimpanzee lives.

Specifically, permissible research, as described in the ''Standards of Care for Chimpanzees Held in the Federally Supported Chimpanzee Sanctuary System'' at 42 CFR part 9, includes:

- Visual observation;
- Behavioral studies designed to improve the establishment and maintenance of social groups. These activities may cause stress as a result of novel interactions between chimpanzees and caregivers, but they are not considered invasive as long as they are intended to maximize the well-being of the chimpanzees;
- Medical examinations as deemed necessary to oversee the health of the chimpanzees, in the least invasive manner possible. Collection of samples routinely obtained during a physical examination for processing during this time is also considered noninvasive since a separate event is not required;
- Administration and evaluation of environmental enrichment used to promote the psychological well-being of the chimpanzees; and
- Actions taken to provide essential medical treatment to an individual chimpanzee exhibiting symptoms of illness. This applies only to serious illness that cannot be treated while the chimpanzee remains within the colony.
- Observational studies and collection of biomaterial in the wild without interfering with the chimpanzee is also permitted.

These decisions apply to all new or competing renewals of grant applications, contract proposals, intramural protocols, and 3rd party projects. The NIH may issue future guidance about the permissible noninvasive research involving chimpanzees. Researchers are encouraged to contact their program officers for additional information or the Division of Program Coordination, Planning, and Strategic Initiatives at *dpcpsi@od.nih.gov*.

The NIH's decision to allow the support of noninvasive research involving the use of chimpanzees, as described in this notice, does not affect requirements for investigators and/or their institutions to obtain permits from the U.S. Fish and Wildlife Service, if applicable, nor does it affect the responsibility to meet all applicable veterinary, colony, and husbandry obligations.

Dated: February 2, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–02554 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Human Genome Research Institute Special Emphasis Panel, KOMP2 (Knockout Mouse Phenotyping Program).

Date: March 3, 2016

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI, 5635FL, NHGRI Twinbrook Library, Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lita Proctor, Ph.D., Extramural Research Programs Staff, Program Director, Human Microbiome Project, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20892, 301 496–4550, *proctorlm@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Sequencing Technology Special Emphasis Panel.

Date: March 24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott at Reagan National Airport, 1999 Salon E & D, Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 4, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02538 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Application Forms for the NIDA Summer Research Internship Program

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 2, 2015, Vol. 80, No. 170, on page 53164. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Drug Abuse (NIDA), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to Omb: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed program, contact: Albert Avila, Ph.D., Director, Office of Diversity and Health Disparities, NIDA, NIH, 6001 Executive Blvd., Room 3106, Rockville, MD 20852, or call non-toll-free number (301)–443–0441 or Email your request, including your address to: *aavila@nida.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: NIDA Summer Research Internship Program 0925-Existing Collection in Use Without an OMB Control Number, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIDA Summer Research Internship program introduces high school and undergraduate students of underrepresented populations to substance abuse research through internships with NIDA grantees at universities across the United States and Puerto Rico. Students intern with NIDA principal investigators for 8–10 weeks during the summer. The internship experience may include laboratory experiments, formal courses, data collection, data analysis, patient recruitment, manuscript preparation, literature reviews and library research. This outreach and pipeline program exposes students interested in biomedical and behavioral research careers to cutting edge substance abuse research.

This program fills a significant unmet need to encourage and support individuals from underrepresented groups to pursue careers in substance abuse research. The NIDA Summer Research Internship program offers a unique opportunity to increase the diversity and creativity of the biomedical research workforce by fostering the development of young talent through the creation of mentorship and training opportunities with premier substance abuse research laboratories around the country.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 350.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Application Form	High School Students	100	1	1	100
Application Form	Undergraduates	250	1	1	250

Dated: February 2, 2016.

Genevieve DeAlmeida-Morris,

Project Clearance Liaison, NIDA, NIH.

[FR Doc. 2016–02446 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: March 4, 2016.

Time: 11:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 3049, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara J Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 4, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02537 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

Date: March 3–4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A. Cope, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 3, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02456 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 contract proposals and 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Transcatheter Cavopulmonary Bypass Endograft.

Date: March 2, 2016.

Time: 9:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Career Development Program to Promote Diversity in Health Research.

Date: March 4, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037.

Contact Person: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 3, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02458 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurogenesis and Cell Fate Study Section, February 18, 2016, 08:00 a.m. to February 19, 2016, 02:00 p.m., Hotel Kabuki, 1625 Post Street, San Francisco, CA, 94115 which was published in the **Federal Register** on January 26, 2016, 81 FR 4316–4317.

The meeting will be held on February 18, 2016 from 8:00 a.m.–8:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: February 3, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02455 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; BD2K RFAs: Courses for Skills Development and Open Educational Resources for Biomedical Big Data (R25).

Date: March 2, 2016.

Time: 12:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: March 3–4, 2016.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 12–251: Behavioral Science Track Award for Rapid Transition Review.

Date: March 3, 2016.

Time: 11:30 a.m. to 1:00 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: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 3, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02454 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Drug Accountability Report Form and Investigator Registration Procedure in the Conduct of Investigational Trials for the Treatment of Cancer (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 17, 2015 page 71815 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Charles Hall, RPh, M.S., Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, National Cancer Institute, 9609 Medical Center Drive, RM 5W240, MSC 9725, Bethesda, Maryland 20892. Or call non-toll-free number (240) 276–6575, or email your request, include your address to: *hallch@mail.nih.gov*.

Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Drug Accountability Report Form and Investigator Registration Procedure in the Conduct of Investigational Trials for the Treatment of Cancer, 0925–0613, Expiration Date 03/31/2016, Revision, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The U.S. Food and Drug Administration (FDA) holds the National Cancer Institute (NCI) responsible, as a sponsor of investigational drug trials, for the collection of information about the clinical investigators who participate in these trials and to assure the FDA that systems for accountability are being maintained by investigators in its clinical trials program. The information collected is used to identify qualified investigators and to facilitate the submission and distribution of important information relative to the investigational drug and the response of the patient to that drug. Investigators are physicians who specialize in the treatment of patients with cancer. Data obtained from the Drug Accountability Record is used to track the dispensing of investigational anticancer agents from receipt from the NCI to dispensing or administration to patients. NCI and/or its auditors use this information for compliance purposes. The frequency of Response is up to 16 times per year. The affected public is private sector including businesses, other for-profit organizations, and non-profit institutions. The type of respondents are investigators, pharmacists, nurses, pharmacy technicians, and data managers.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 14,649 hours.

TABLE 1—ESTIMATES OF ANNUAL BURDEN

Estimated annualized burden hours					
Type of respondents	Form	Number of respondents	Number of responses	Average time per response (in hours)	Total hour burden
Investigators and Designee for Investigator Registration and DARF.	Statement of Investigator	22,283	1	15/60	5,571
	NCI/DCTD/CTEP Supplemental Investigator.	22,283	1	10/60	3,714
	Financial Disclosure Forms	22,283	1	5/60	1,857
	NCI/DCTD/CTEP Drug Accountability Record Form (DARF and DARF-Oral).	3,288	16	4/60	3,507
Total		25,571	119,457		14,649

Dated: February 3, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–02447 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST1 Member Conflict SEP.

Date: March 8, 2016.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: William C Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS R 35 Review.

Date: March 17–18, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–402–0288, *Natalia.strunnikova@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS R35 Review.

Date: March 17–18, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ernest W Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS R35 Review.

Date: March 17–18, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–3562, *neuhuber@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R24/P30 Review.

Date: April 5, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–402–0288, *Natalia.strunnikova@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Udall Center Review.

Date: April 5–6, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–3562, *neuhuber@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 4, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02536 Filed 2–8–16; 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; ''Comprehensive Resources for HIV Microbicides and Biomedical Prevention (N01)''.

Date: February 23, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Jay R Radke, Ph.D., AIDS Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G11B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC–9823, Bethesda, MD 20892–9823, (240) 669–5046, *jay.radke@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *February 4, 2016.*

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02535 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.

Date: February 25, 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, Bethesda, MD 20852.

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Molecular and Cellular Biology Study Section.

Date: March 2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Diego Marriott Mission Valley Hotel, 8757 Rio San Diego Drive, San Diego, CA 92108.

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Health Disparities in and Caregiving for Alzheimer's Disease.

Date: March 4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.

Contact Person: Gabriel B Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Reproduction, Endocrinology and Metabolic Processes.

Date: March 4, 2016.
Time: 1:00 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: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience.
Date: March 7–8, 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: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, *schauweckerpe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastrointestinal and Liver Pathobiology and Toxicology.
Date: March 7–8, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.
Date: March 7, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard G Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–325: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery Systems.
Date: March 7, 2016.
Time: 9:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurobiology of Visual Cognition and Perception.
Date: March 7, 2016.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Sleep, Memory, Anxiety and Reward.
Date: March 7, 2016.
Time: 10:30 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3172, Bethesda, MD 20892, *cowleshw@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 3, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02540 Filed 2–8–16; 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 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.
Date: February 29–March 1, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, Calvert Room 1&2, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''Comprehensive Resources for HIV Microbicides and Biomedical Prevention (N01)''.
Date: March 2, 2016.
Time: 10:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, Room 6F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).
Contact Person: Jay R Radke, Ph.D., AIDS Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G11B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC–9823, Bethesda, MD 20892–9823, (240) 669–5046, *jay.radke@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: February 4, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–02533 Filed 2–8–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2016–0080]

Establishment of Dispersant Preauthorization Area in Alaska

AGENCY: Coast Guard, DHS.

ACTION: Notice of establishment of dispersant preauthorization plan.

SUMMARY: On behalf of the Alaska Regional Response Team (ARRT), the U.S. Coast Guard (USCG) announces establishment of a more inclusive, comprehensive, and conservative dispersant use policy that includes a preauthorization area and an enhanced protocol for use of chemical dispersant during responses to spills of crude oil in certain waters offshore of Alaska. Federal regulations covering certain vessel response plans require development of defined dispersant response capabilities when such vessels are operating in waters where dispersant use preauthorization agreements exist.

DATES: Plan holders for affected vessel response plans have 24 months from the date of publication of this notice to achieve compliance.

FOR FURTHER INFORMATION CONTACT: For information about this document: From USCG: call or email Mark Everett, Incident Management & Preparedness Advisor, Seventeenth Coast Guard District, Juneau, AK; telephone (907) 463–2804; email *Mark.Everett@uscg.mil*;

From Environmental Protection Agency (EPA): call or email Chris Field, Program Manager, Emergency Management Program (EPA Region 10); telephone (206) 553–1674; email *Field.Chris@epa.gov*;

For the State of Alaska: call or email Gary Folley, Program Manager, Prevention, Preparedness & Response Program, Division of Spill Prevention & Response, Alaska Department of Environmental Conservation; telephone (907) 262–3411; email *gary.folley@alaska.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

Because this notice is non-rulemaking, no public participation or comments are being taken. Questions can be directed to any person named in the **FOR FURTHER INFORMATION CONTACT** section, above.

Discussion

The Alaska Regional Response Team (ARRT) is one of 13 interagency, intergovernmental groups responsible under the National Oil and Hazardous Substances Pollution Contingency Plan (a.k.a. National Contingency Plan or NCP) at 40 CFR part 300 for regional planning, including policy development, and coordination of preparedness and response actions related to discharges of oil and releases of hazardous materials and other pollutants and contaminants into the environment. The ARRT's responsibilities include development of policies regarding the preauthorization of certain alternative (non-mechanical) countermeasures, including chemical dispersants, used in oil spill response operations.

Preauthorization for use of dispersants has not existed in the Alaska region since September 2008. This new policy change will allow for industry to develop a reliable, regulated dispersant use capability to be available to mitigate—if directed by the Federal On Scene Coordinator—large crude oil spills more readily. However, extensive government, tribal, and other stakeholder notifications would be required before use.

Following a multi-year collaborative effort among governmental agencies as described in the NCP at 40 CFR 300.910, the ARRT signed a new *Dispersant Use Plan for Alaska* (Appendix I, Annex F, Alaska Federal/State Preparedness Plan for Response to Oil & Hazardous Substance Discharges/Releases [Unified Plan]) on January 27, 2016. This document includes, among other things, an updated protocol for use and monitoring of chemical dispersants in undesignated areas on a case-by-case basis and a preauthorization plan for use and monitoring of chemical dispersants on spills from tank vessels carrying crude oil as cargo during non-innocent passage through certain areas north and south of the Aleutian Island chain and the northern Gulf of Alaska. The *Dispersant Use Plan for Alaska* may be found at *www.alaskarrt.org.*

U.S. Coast Guard enforcement of the requirements of 33 CFR 154.1035 and 1045 and 33 CFR 155.1035, and 1050 depends upon existence of a dispersant preauthorization plan (including a preauthorization area) which complies with the requirements of the NCP, specifically at 40 CFR 300.910. Enforcement of the preauthorization area compliance requirements will take effect 24 months after publication of this notice to allow plan holders time to achieve compliance.

Development of the *Dispersant Use Plan for Alaska* included compliance with the consultation (with National Marine Fisheries Service and U.S. Fish & Wildlife Service) requirements of section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) analysis required by the Magnusson-Stevens Fisheries Conservation and Management Act, consideration of the requirements of the Marine Mammal Protection Act (MMPA), outreach to affected communities and stakeholder groups, compliance with State of Alaska public notice requirements, and consultation with federally-recognized tribes as required by Executive Order 13175. Implementation of the new policy includes a 24-month timeline for development of dispersant areas to be avoided within geographic subareas covered by the preauthorization area. It also includes industry establishing sufficient dispersant capability in locales to be available for potential authorization for use by the Federal On Scene Coordinator during a spill response. Failure to establish dispersant areas to be avoided within geographic subareas covered by the preauthorization area will result in the entire geographic subarea reverting to the case-by-case dispersant use protocol used in undesignated areas until such time as dispersant use avoidance areas are developed.

This notice is issued under authority of the Oil Pollution Act of 1990 and Executive Order 12777.

Dated: January 28, 2016.

M.L. Everett,

Incident Management & Preparedness Advisor, U.S. Coast Guard District Seventeen.

[FR Doc. 2016–02559 Filed 2–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP–2016–0007]

Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of a Steel Tube Fitting

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice; solicitation of comments.

SUMMARY: U.S. Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification under the Harmonized Tariff Schedule of the United States (HTSUS) of a steel tube fitting from Taiwan. CBP classified the steel tube fitting under subheading 7307.99.50, HTSUS, which provides for: ''Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel: Other: Other: Other.'' The 2015 column one, general rate of duty is 4.3 percent *ad valorem.* Petitioner contends that the proper classification for the steel tube fitting is under subheading 8412.90.90, HTSUS, which provides for: ''Other engines and motors, and parts thereof: Parts: Other.'' Petitioner asserts that some of its competitors are classifying all or a substantial portion of similar fittings as parts of hydraulic systems, under subheading 8412.90.90, HTSUS,

which is duty free, thus placing Petitioner at a competitive disadvantage. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before April 11, 2016.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2016–0007.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 90 K St. NE., 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of steel tube fittings. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m., at Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, at (202) 325–0092.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of Brennan Industries, Inc. (''Petitioner''), which manufactures various hydraulic connectors, fittings and adapters in Solon, Ohio. Brennan meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and section 175.3(a) in Title 19 of the Code of Federal Regulations (CFR).

In New York Ruling (NY) E83408, dated July 8, 1999, a steel tube fitting from Taiwan is described as a ''cold forged nonalloy steel male threaded connector body having a center hex nut, one flare tube end and one male pipe end. These tube fittings connect a piece of rigid tubing to a valve, manifold or another piece of rigid tubing in a hydraulic system.'' CBP classified the steel tube fitting in subheading 7307.99.50, Harmonized Tariff Schedule of the United States (HTSUS), as a tube or pipe fitting of iron or steel, other, other, other. Petitioner contends that the proper classification for the fitting is subheading 8412.90.90, HTSUS, which covers ''Other engines and motors, and parts thereof: Parts: Other.'' In 1999, the column one, general rate of duty for subheading 7307.99.50, HTSUS, was 4.3 percent *ad valorem,* and for heading 8412, HTSUS, it was ''Free'' (the current duty rates are respectively 4.3% *ad valorem* and ''Free'').

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (''GRIs''). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may be applied, in numerical order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding on the contracting parties and, therefore, not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP's position is that the ENs should always be consulted. *See* Treasury Decision (T.D.) 89–80, 54 FR 35127, 35128 (Aug. 23, 1989).

The Petitioner's Views

Petitioner contends that the proper classification for the fitting is subheading 8412.90.90, HTSUS, which covers ''Other engines and motors, and parts thereof: Parts: Other.'' Petitioner notes that the ENs for Section XV, HTSUS, (which covers heading 7307, HTSUS), make clear that Section XV, HTSUS, does not cover ''[a]rticles of Section XVI (machinery, mechanical appliances and electrical goods, which include hydraulic system parts).'' *See* EN 1(f) to Section XV. Section XVI, HTSUS, covers heading 8412, HTSUS. Petitioner also recognizes that Legal Note 1(g) to Section XVI excludes certain products from Section XVI coverage, including, *inter alia,* parts of general use, as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (chapter 39). *See also* EN 1(g) to Section XVI (''parts of general use'' is defined throughout the tariff schedule to mean, *inter alia,* articles of heading 7307). Referencing Note 2(b) to Section XVI, Petitioner then asserts that machine parts, if suitable for use solely or principally with a particular kind of machine of heading 8412, are to be classified with that machine or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538, as appropriate. Petitioner also cites to HQ 956743 (dated January 24, 1995), NY I82861 (dated June 28, 2002), and NY K89798, *supra* (dated October 18, 2004; incorrectly cited by the Petitioner as NY K89789).

Petitioner maintains the fitting of NY E83408 is ''solely imported, sold and specifically designed according to hydraulic system industry specifications for use in assembly of particular hydraulic engine or motor systems,'' and is essential to the effective and safe operation of the subassemblies and components to which they are parts. As such, according to Petitioner, it is classifiable in subheading 8412.90.90, HTSUS, which specifically covers ''other hydraulic engine and motor parts.'' Petitioner also contends that CBP's classification is incorrect because the fitting consists of more than one material or substance, thus implicating GRI 2(b) and GRI 3. Petitioner proceeds to reason that the fitting is *prima facie* classifiable as both a ''tube and pipe fitting'' of heading 7307, HTSUS, and an ''other hydraulic engine or motor part'' of heading 8412, HTSUS, and, therefore, GRI 3 is applicable. Petitioner then reasons that GRI 3(a) cannot determine classification of the fitting because the competing headings are equally specific, and GRI 3(b) is inapplicable as well because the fitting's essential character cannot be determined. Therefore, applying GRI 3(c), Petitioner concludes that heading 8412, HTSUS, is the proper heading because it is last in numerical order behind heading 7307, HTSUS.

Analysis Used by CBP in Prior Ruling

In the ruling that is the subject of this petition, CBP held that a cold-forged, non-alloy, steel tube fitting that connects rigid tubing to valves, manifolds or other pieces of rigid tubing in a hydraulic system is classified in

subheading 7307.99.50, HTSUS, as other tube or pipe fitting (for example, couplings, elbows, sleeves), of iron or steel. It is CBP's position that the subject fitting is a part of general use that can connect tubes and pipes, and is thus classified under heading 7307, HTSUS, by application of GRI 1 and the exclusionary effect of Legal Note 1(g) to Section XVI. In order for classification by application of GRI 3 to be appropriate, a good must be unable to be classified by application of GRIs 1 or 2, and the good must be *prima facie* classifiable in two or more headings. In this instance, goods of heading 7307, HTSUS, are explicitly excluded from heading 8412, HTSUS, by application of Legal Note 1(g) to Section XVI. Therefore, GRI 3 is not applicable. Historically, CBP has recognized that, for tariff purposes, hoses are not interchangeable with pipes or tubes. In HQ 088393, dated March 26, 1991, CBP examined the difference between hose fittings, and tube or pipe fittings. In that ruling, CBP first noted that the courts have long recognized that although a ''hose'' may be considered a ''tube'' in common meaning, they are not interchangeable terms for tariff purposes. *Citing John V. Carr & Son, Inc.* v. *United States,* 76 Cust.Ct. 162, C.D. 4652 (1976) (interpreting the meanings of the terms ''hose'' and ''pipes and tubes'' within the context of the Tariff Schedule of the United States (TSUS)); *see also J.E. Bernard & Co., Inc.* v. *United States,* 64 Cust.Ct. 425, C.D. 4029 (1970) (in comparing the TSUS tariff terms ''copper tubing'' and ''flexible metal tubing,'' the court expressed the principle that quite often articles that literally appear to respond to the common meaning of a tariff term are not the articles classified in a tariff sense); *R.J. Saunders & Co., Inc.* v. *United States,* 49 C.C.P.A. 87, C.A.D. 801 (1962). Thus, under the TSUS, CBP consistently held that hose fittings are not properly classifiable under the TSUS provision for pipe and tube fittings. *See* C.I.E. 953/63 (July 2, 1963), C.I.E. 1684/65 (October 18, 1965), TC 465.251 M (June 18, 1968), TC 426.89 AS (November 27, 1968), MFG 423.371 G (September 8, 1970), and HQ 064538 (April 17, 1980). While prior TSUS cases are not dispositive, ''[n]evertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.'' H.R. Conf. Rep. No. 100–576, at 549–50 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582–83; *see also* NY 870421, dated February 7, 1992.

The text of heading 7307, HTSUS, provides for ''tube or pipe fittings,'' which is similar to the TSUS text in the cases discussed above (''pipe and tube fittings,'' heading 613, TSUS). Thus, with regard to the competing HTSUS provisions at issue, CBP's position is that if an iron or steel fitting is a part of general use and is designed in such a manner where it can be used in conjunction with tubes or pipes, or tubes, pipes and hoses, that fitting is classified in heading 7307. *See* NY K87518, dated July 21, 2004; *see also* NY H87517, dated February 20, 2002.

However, and again with regard to the competing headings at issue, if such fittings meet the terms of Note 2 to Section XVI and are considered to be parts of hydraulic systems, such as hose fittings (as opposed to ''parts of general use'' of heading 7307, HTSUS), they are classified in heading 8412, HTSUS. *See* NY K89798, dated October 18, 2004; NY N006172, dated February 28, 2007; NY H82321, dated June 25, 2001; NY N242950, dated June 26, 2013; *see also* HQ 956743, dated January 24, 1995 (stating the general principle).

CBP concludes that the subject fittings are parts of general use that can connect tubes and pipes, and are thus classified under heading 7307, HTSUS, by application of GRI 1 and the exclusionary effect of Legal Note 1(g) to Section XVI. Finally, with regard to Petitioner's argument that GRI 3 is applicable, in order for classification by application of GRI 3 to be appropriate, a good must be unable to be classified by application of GRIs 1 or 2, and the good must be *prima facie* classifiable in two or more headings. In this instance, goods of heading 7307, HTSUS, are explicitly excluded from heading 8412, HTSUS, by application of Legal Note 1(g) to Section XVI. Therefore, GRI 3 is not applicable. In addition, GRI 3 does not apply because the fittings do not consist of more than one material or substance.

Comments

Pursuant to section 175.21, CBP Regulations (19 CFR 175.21), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of hydraulic system fittings, as well as all comments received in response to this notice, will be available for public inspection on the docket at *www.regulations.gov.* Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and section 175.21 of the CBP Regulations (19 CFR 175.21).

Dated: February 4, 2016.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2016–02555 Filed 2–8–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0054]

Agency Information Collection Activities: Notice of Naturalization Oath Ceremony, Form Number N–445; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 11, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0054 in the subject box, the agency name and Docket ID USCIS–2006–0055. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0055;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0055 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–445; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form N–445 refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application. USCIS will use this information to determine if any changes to the respondent's prior statements affect the decisions the agency has made in regards to the respondent's ability to be naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–445 is 900,000 and the estimated hour burden per response is .166 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 149,400 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: February 4, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–02531 Filed 2–8–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–BOHA–20182; PPMPSPD1Z.YM0000][PPNEBOHAS1]

Notice of March 9, 2016, Meeting of the Boston Harbor Islands National Recreation Area Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of annual meeting.

SUMMARY: This notice announces the annual meeting of the Boston Harbor Islands National Recreation Area Advisory Council (Council). The agenda includes a talk about the history and contemporary nature of the Boston Harbor Islands as ''islands on the edge.'' Since their ancient formation by rising sea level, the Boston Harbor Islands have literally been on the edge of the continent, places where land meets sea, and now at the edge of a major metropolitan area. The islands have often been on the ''edge of society,'' used to isolate people, institutions, and activities. After the talk, a business meeting will follow. The Council will introduce candidates interested in membership, hold elections for officers, and nominate Council representatives to the Partnership. Superintendent Giles Parker will also give updates about park operations and planning efforts.

DATES: March 9, 2016, from 6:00 p.m. to 8:00 p.m. (Eastern).

ADDRESSES: Museum of African American History, 14 Beacon Street, Suite 401, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Giles Parker, Superintendent and Designated Federal Official (DFO), Boston Harbor Islands National Recreation Area, 15 State Street, Suite 1100, Boston, MA 02109, telephone (617) 223–8669, or email *giles_parker@nps.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Those wishing to submit written comments may contact the DFO for the Council, Giles Parker, by mail at National Park Service, Boston Harbor Islands, 15 State Street, Suite 1100, Boston, MA 02109. Before including your address, telephone 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Council was appointed by the Director of the National Park Service pursuant to 16 U.S.C. 460kkk(g). The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the implementation of a management plan and park operations. Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

Dated: February 3, 2016.

Alma Ripps

Chief, Office of Policy.

[FR Doc. 2016–02481 Filed 2–8–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–20140; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before January 9, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by February 24, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 9, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ARIZONA

Cochise County

Warren Historic District, Roughly bounded by Cole & 18th Sts., Yuma Trail, Minder, Rupp & Knickerbocker Aves., Warren, 16000023

Pima County

Wilson, Betty-Jean, House, (Residential Architecture of Josias Joesler in Tucson, Arizona, 1927–1956 MPS) 2322 E. Calle Lustre, Tucson, 16000024

COLORADO

Otero County

Santa Fe Trail Mountain Route Trail Segments—Bloom Vicinity, (Santa Fe Trail MPS) Address Restricted, Bloom, 16000025

Santa Fe Trail Mountain Route Trail Segments—Timpas Vicinity, (Santa Fe Trail MPS) Address Restricted, Timpas, 16000026

DISTRICT OF COLUMBIA

District of Columbia

Saint James Mutual Homes, (Apartment Buildings in Washington, DC, MPS) 201–217 P, 1410–1414 3rd, 220–215–229 O Sts. SW., 1411–1415 James Creek Pkwy. SW., Washington, 16000027

Sedgwick Gardens, (Apartment Buildings in Washington, DC, MPS) 3726 Connecticut Ave. NW., Washington, 16000028

HAWAII

Honolulu County

Ward, George R., House, 2438 Ferdinand Ave., Honolulu, 16000029

MISSOURI

Jackson County

Plaza Towers, (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS) 209 Emanuel Cleaver II Blvd., Kansas City, 16000030

St. Louis County

Fort Bellefontaine, Address Restricted, Blackjack, 16000031

St. Louis Independent City

St. Louis Post-Dispatch Rotogravure Printing Plant, 4340–50 Duncan Ave., St. Louis (Independent City), 16000032

MONTANA

Lewis and Clark County

Montana State Capitol Campus Historic District, Bounded by E. Broadway & N. Carson Sts., E. 8th & N. Montana Aves., Helena, 16000033

NEW YORK

Jefferson County

Norton—Burnham House, 8748 NY 178, Henderson, 16000034

Kings County

B and B Carousel, 1615 Boardwalk, Brooklyn, 16000035

New York County

Master Building, 310 Riverside Dr., New York, 16000036

Oneida County

Whiffen—Ribyat Building, 327–331 Bleecker St., Utica, 16000037

Queens County

1964–1965 New York World's Fair Carousel, 54th & 56th Aves. on 111th St., Queens, 16000038

Schoharie County

Lawyer, Johannes Jr., House, 194 Main St., Schoharie, 16000039

OHIO

Clark County

Springfield Metallic Casket Company, 105 N. Center St., Springfield, 16000040

Cuyahoga County

Greenwood Farm, 264 Richmond Rd., Richmond Heights, 16000041

Mueller Electric Company Building, 1587 E. 31st St., Cleveland, 16000042

Hamilton County

Baldwin Piano Company Building, 655 Eden Park Dr., Cincinnati, 16000043

Montgomery County

Grant—Deneau Tower, 40 W. 4th St., Dayton, 16000044

Summit County

Falls Stamping and Welding Building, 1701 S. Front St., Cuyahoga Falls, 16000045

SOUTH CAROLINA

Aiken County

Hickman Mill Historic District, Bounded by Horse Cr., Marshall, Canal & Hard Sts., Graniteville, 16000046

SOUTH DAKOTA

Custer County

Archeological Site 39CU2565, (Prehistoric Rock Art of South Dakota MPS) Address Restricted, Dewey, 16000047

Archeological Site 39CU3178, (Prehistoric Rock Art of South Dakota MPS) Address Restricted, Dewey, 16000048

Archeological Site 39CU3393, (Prehistoric Rock Art of South Dakota MPS) Address Restricted, Dewey, 16000049

Archeological Site 39CU4164, (Prehistoric Rock Art of South Dakota MPS) Address Restricted, Dewey, 16000050

Fall River County

Archeological Site 39FA2530, (Prehistoric Rock Art of South Dakota MPS) Address Restricted, Edgemont, 16000051

Archeological Site 39FA2531, (Prehistoric Rock Art of South Dakota MPS) Address Restricted, Edgemont, 16000052

WYOMING

Johnson County

Spear-O-Wigwam Ranch, Jct. of Coffeen Park & Spear-O-Wigwam Rds., Story, 16000053

Authority: 60.13 of 36 CFR part 60

Dated: January 15, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–02478 Filed 2–8–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–20164; PPNECACOS0, PPMPSD1Z.YM0000]

Notice of March 14, 2016, Meeting for Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the 302nd Meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The public meeting of the Cape Cod National Seashore Advisory Commission will be held on Monday, March 14, 2016, at 1:00 p.m. (Eastern).

ADDRESSES: The 302nd meeting of the Cape Cod National Seashore Advisory Commission will take place on Monday, March 14, 2016, at 1:00 p.m., in the conference room at park headquarters, 99 Marconi Site Road, Wellfleet, Massachusetts 02667 to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (January 11, 2016)
3. Reports of Officers
4. Reports of Subcommittees
   - Update of Pilgrim Nuclear Plant Emergency Planning Subcommittee
5. Superintendent's Report
   - Shorebird Management Plan/Environmental Assessment—Update
   - Natural Resource Management Projects—Bats
   - Nauset Spit Update
   - National Park Service Centennial
   - Improved Properties/Town Bylaws
   - Herring River Wetland Restoration
   - Highlands Center Update
   - Ocean Stewardship Topics—Shoreline Change
   - Climate Friendly Parks
6. Old Business
   - Live Lightly Campaign Progress Report
7. New Business
8. Date and Agenda for Next Meeting
9. Public Comment
10. Adjournment

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from George E. Price, Jr., Superintendent, Cape Cod National Seashore, 99 Marconi Site, Wellfleet, Massachusetts 02667, or via telephone at (508) 771–2144.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126, as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, telephone 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 may 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.

Dated: February 3, 2016.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–02482 Filed 2–8–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–PAGR–20154; PX.PR166532I.00.1]

Notice of March 3, 2016, Meeting for the Paterson Great Falls National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the National Park Service is hereby giving notice of the March 3, 2016, meeting for the Paterson Great Falls National Historical Park Advisory Commission. The Commission is authorized by the Omnibus Public Land Management Act, (16 U.S.C. 410lll), ''to advise the Secretary in the development and implementation of the management plan.'' Agendas for these meetings will be provided on the Commission Web site at *http://www.nps.gov/pagr/parkmgmt/federal-advisory-commission.htm.*

DATES: The Commission will meet on Thursday, March 3, 2016, 2:00 p.m.–5:00 p.m. (Eastern).

ADDRESSES: The meeting will be held at the Rogers Meeting Center, 32 Spruce Street, Paterson, NJ 07501.

FOR FURTHER INFORMATION CONTACT: Darren Boch, Superintendent and Designated Federal Officer, Paterson Great Falls National Historical Park, 72 McBride Avenue, Paterson, NJ 07501, (973) 523–2630.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to formalize the Commission's comments on the Paterson Great Falls National Historical Park draft general management plan and environmental assessment.

This meeting is open to the public and time will be reserved during each meeting for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim, they must submit them in writing. Written comments and requests for agenda items may be sent to: Federal Advisory Commission, Paterson Great Falls National Historical Park, 72 McBride Avenue, Paterson, NJ 07501.

Before including your address, telephone 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 may 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. All comments will be made part of the public record and will be electronically distributed to all Commission members.

Dated: February 3, 2016.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–02479 Filed 2–8–16; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–980]

Certain Rack Mountable Power Distribution Units; Commission Decision Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 1) terminating the investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 12, 2016, based on a complaint filed by Server Technology, Inc. (''STI''), of Reno, Nevada. 81 FR 1441–42. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rack mountable power distribution units through the infringement of certain claims of U.S. Patent Nos. 7,162,521; 7,400,493; 7,414,329; 7,447,002; 7,567,430; 7,706,134; 8,541,907; 8,601,291; and 8,694,272. *Id.* at 1441. The Commission's notice of investigation named as respondents Raritan Americas, Inc., of Somerset, New Jersey; Legrand North America, of West Hartford, Connecticut; and Legrand SA of Limoges Cedex, France (collectively, ''Respondents''). *Id.* at 1442. The Office of Unfair Import Investigation was not named as a party to the investigation. *Id.*

On January 8, 2016, STI filed an unopposed motion to terminate the investigation based on a settlement agreement. No party responded to the motion.

On January 12, 2016, the ALJ issued the subject ID, granting the motion. The ALJ found that STI attached the settlement agreement, and stated that there were no other agreements between STI and Respondents concerning the subject matter of the investigation. The ALJ also found that there is no indication that terminating the investigation based on settlement would harm the public interest. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 3, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–02416 Filed 2–8–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–936]

Certain Footwear Products: Commission Determination To Review-in-Part a Final Initial Determination Finding a Violation of Section 337; and To Request Written Submissions Regarding the Issues Under Review and Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 in the above-captioned investigation. The Commission is also requesting written submissions regarding the issues under review and remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 17, 2014, based on a complaint filed on behalf of Converse Inc. of North Andover, Massachusetts. 79 FR 68482–83. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain U.S. Trademark Registration Nos.: 4,398,753 (''the '753 trademark''); 3,258,103 (''the '103 trademark''); and 1,588,960 (''the '960 trademark''). The complaint further alleges violations of section 337 based upon unfair competition/false designation of origin, common law trademark infringement and unfair competition, and trademark dilution, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission's notice of investigation named numerous respondents including Wal-Mart Stores, Inc. of Bentonville, Arkansas; Skechers U.S.A., Inc. of Manhattan Beach, California; and Highline United LLC d/b/a Ash Footwear USA of New York City, New York. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *Id.* New Balance Athletic Shoe, Inc. (''New Balance'') of Boston, Massachusetts was subsequently added as a respondent-intervenor. *See* Order No. 36 (unreviewed, Comm'n Notice Feb. 19, 2015). Only these four respondents remain active in the investigation. All other respondents, as detailed below, have been found in default or have been

terminated from the investigation based on good cause or settlement and/or consent order stipulation.

On February 10, 2015, the Commission determined not to review an ID (Order No. 32) granting a joint motion of complainant and Skeanie Shoes, Inc. (''Skeanie'') of New South Wales, Australia terminating the investigation as to Skeanie Shoes based on settlement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 33) granting a joint motion of complainant and PW Shoes, Inc. (''PW Shoes'') of Maspeth, New York terminating the investigation as to PW Shoes based on settlement and consent order stipulation. Also on the same date, the Commission determined not to review an ID (Order No. 34) granting a joint motion of complainant and Ositos Shoes, Inc. (''Ositos Shoes'') of South El Monte, California terminating the investigation as to Ositos Shoes based on settlement agreement and consent order stipulation. On March 4, 2015, the Commission determined not to review an ID (Order No. 52) granting a joint motion of complainant and Ralph Lauren Corporation (''Ralph Lauren'') of New York City, New York terminating the investigation as to Ralph Lauren based on settlement agreement and consent order stipulation. On March 12, 2015, the Commission determined not to review an ID (Order No. 55) granting a joint motion of complainant and OPPO Original Corp. (''OPPO'') of City of Industry, California terminating the investigation as to OPPO based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 57) granting a joint motion of complainant and H & M Hennes & Mauritz LP (''H & M'') of New York City, New York terminating the investigation as to H & M based on settlement agreement and consent order stipulation. On March 24, 2015, the Commission determined not to review an ID (Order No. 59) granting a joint motion of complainant and Zulily, Inc. (''Zulily'') of Seattle, Washington terminating the investigation as to Zulily based on settlement agreement and consent order stipulation. On March 30, 2015, the Commission determined not to review an ID (Order No. 65) granting a joint motion of complainant and Nowhere Co. Ltd. d/b/a Bape (''Nowhere'') of Tokyo, Japan terminating the investigation as to Nowhere based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 67) granting a joint motion of complainant and The Aldo Group (''Aldo'') of Montreal, Canada terminating the investigation as to Aldo based on settlement agreement and consent order stipulation.

On April 1, 2015, the Commission determined not to review an ID (Order No. 69) granting a joint motion of complainant and Gina Group, LLC (''Gina Group'') of New York City, New York terminating the investigation as to Gina Group based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 70) granting a joint motion of complainant and Tory Burch LLC (''Tory Burch'') of New York City, New York terminating the investigation as to Tory Burch based on settlement agreement and consent order stipulation. On April 24, 2015, the Commission determined not to review an ID (Order No. 73) granting a joint motion of complainant and Brian Lichtenberg, LLC (''Brian Lichtenberg'') of Los Angeles, California terminating the investigation as to Brian Lichtenberg based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 80) granting a joint motion of complainant and Fila U.S.A., Inc. (''Fila'') of Sparks, Maryland terminating the investigation as to Fila based on settlement agreement and consent order stipulation. On May 4, 2015, the Commission determined not to review an ID (Order No. 86) granting a joint motion of complainant and Mamiye Imports LLC d/b/a Lilly of New York located in Brooklyn, New York and Shoe Shox of Seattle, Washington (collectively, ''Mamiye Imports'') terminating the investigation as to Mamiye Imports based on settlement agreement and consent order stipulation.

On May 6, 2015, the Commission determined not to review an ID (Order No. 83) granting New Balance's motion to terminate the investigation as to New Balance's accused CPT Hi and CPT Lo model sneakers based on a consent order stipulation. On May 13, 2015, the Commission determined not to review an ID (Order No. 93) granting a joint motion of complainant and Iconix Brand Group, Inc. (''Iconix'') of New York City, New York terminating the investigation as to Iconix based on settlement agreement and consent order stipulation. On June 4, 2015, the Commission determined not to review an ID (Order No. 108) granting a joint motion of complainant and A-List, Inc. d/b/a Kitson (''Kitson'') of Los Angeles, California terminating the investigation as to Kitson based on settlement agreement and consent order stipulation. On June 12, 2015, the Commission determined not to review an ID (Order No. 114) granting a joint motion of complainant and Esquire Footwear LLC (''Esquire'') of New York City, New York terminating the investigation as to Esquire based on settlement agreement, consent order stipulation, and consent order. On July 15, 2015, the Commission determined not to review an ID (Order No. 128) granting a joint motion of complainant and Fortune Dynamic, Inc. (''Fortune Dynamic'') of City of Industry, California terminating the investigation as to Fortune Dynamic based on settlement agreement and consent order stipulation. On August 12, 2015, the Commission determined not to review an ID (Order No. 154) granting a joint motion of complainant and CMerit USA, Inc. (''CMerit'') of Chino, California terminating the investigation as to CMerit based on settlement agreement and consent order stipulation. On August 14, 2015, the Commission determined not to review an ID (Order No. 155) granting a joint motion of complainant and Kmart Corporation (''Kmart'') of Hoffman Estates, Illinois terminating the investigation as to Kmart based on settlement agreement and consent order stipulation.

Also, on March 12, 2015, the Commission determined not to review an ID (Order No. 58) finding Dioniso SRL of Perugia, Italy; Shenzhen Foreversun Industrial Co., Ltd. (a/k/a Shenzhen Foreversun Shoes Co., Ltd.) (''Foreversun'') of Shenzhen, China; and Fujian Xinya I&E Trading Co. Ltd. of Jinjiang, China in default. Similarly, on June 2, 2015, the Commission determined not to review an ID (Order No. 106) finding Zhejiang Ouhai International Trade Co. Ltd. and Wenzhou Cereals Oils & Foodstuffs Foreign Trade Co. Ltd., both of Wenzhou, China, in default. Further, on March 25, 2015, the Commission determined not to review an ID (Order No. 68) granting the motion of Orange Clubwear, Inc. of Westminster, California to terminate the investigation as to itself based on a consent order stipulation. On May 12, 2015, the Commission determined not to review an ID terminating the investigation as to Edamame Kids, Inc. of Alberta, Canada for good cause and without prejudice.

The ALJ issued his final ID on November 17, 2015, finding a violation of section 337 as to certain accused products of each active respondent and as to all accused products of each defaulting respondent. Specifically, the

ALJ found that the '753 trademark is not invalid and that certain accused products of each active respondent, and all accused products of each defaulting respondent, infringe the '753 trademark. The ALJ also found that certain accused products of defaulting respondent Foreversun infringe both the '103 and '960 trademarks. The ALJ also found no violation of section 337 with respect to the common law rights asserted in the designs depicted in the '753, '103, and '960 trademarks, and found no dilution of the '753 trademark. The ALJ also issued his recommendation on remedy and bonding during the period of Presidential review. He recommended a general exclusion order directed to footwear products that infringe the asserted trademarks, and recommended cease and desist orders directed against each respondent found to infringe. On December 4, 2015, complainant, respondents, and the Commission investigative attorney (''IA'') each filed a timely petition for review of the final ID. On December 14, 2015, each of these parties filed responses to the other petitions for review.

Having examined the record of this investigation including the ID, the parties' petitions for review, and the responses thereto, the Commission has determined to review-in-part the final ID. Specifically, the Commission has determined to review: (1) The ID's finding of no invalidity of the '753 trademark; (2) the ID's findings regarding infringement of the '753 trademark; (3) the ID's finding of invalidity of the common law rights asserted in the design depicted in the '753 trademark; and (4) the ID's finding of no violation of section 337 with respect to the common law rights asserted in the designs depicted in the '103 and '960 trademarks. The Commission has also determined not to review the remainder of the final ID.

On review, with respect to violation, the parties are requested to submit briefing limited to the following issues:

(1) Please explain whether and to what extent the statutory presumption of validity for a registered trademark, *i.e.,* 15 U.S.C. 1057(b), 1115(a), applies where the trademark owner alleges infringement which began prior to the date of registration. Please include in your discussion how the courts have applied the presumption with respect to shifting the burden of production and the burden of persuasion. Please discuss applicable legislative history, statutory provisions, and case law. Please provide an analysis of how the presumption applies to the evidence in the record with regard to secondary meaning.

(2) After secondary meaning factor (7) (evidence that actual purchasers associate the trademark with a particular source), please provide an analysis of the relative importance of each factor that courts consider regarding whether or not a trademark has acquired secondary meaning.

(3) Does secondary meaning factor (2) (exclusivity of use) require actual evidence of relative volume of sales, market penetration, and/or consumer association with the third-party's use of the relevant trademark for this factor to be meaningfully considered? Please provide an analysis of the evidence of record in your discussion of relevant authorities pertaining to this issue. *See, e.g., Echo Travel, Inc.* v. *Travel Associates, Inc.,* 870 F.2d 1264, 1267 (7th Cir. 1989); *Levi Strauss & Co.* v. *Genesco, Inc.,* 742 F.2d 1401, 1403 (Fed. Cir. 1984).

(4) What is the appropriate time frame for considering evidence pertaining to secondary meaning factor (2) (exclusivity of use)? Does the time frame used for secondary meaning factor (3) (length of use) inform the appropriate time frame for factor (2)? Please discuss applicable case law. Please include in your discussion cases analyzing historic third-party use relating to the relevant consumer group.

(5) With regard to secondary meaning factor (7) (evidence that actual purchasers associate the trademark with a particular source), please discuss how courts assess survey results with respect to the minimum acceptable percentage of survey participants who associate the relevant trademark with one source.

(6) Regarding secondary meaning factor (4) (the degree and manner of sales, advertising, and promotional activities), the ALJ found that Converse's failure to highlight the CMT in its advertisements did not lessen the support of this factor weighing in favor of secondary meaning. ID at 53–54. Is this the correct conclusion? Can other attributes of the product also identify it with the Complainant (*e.g.,* the Chuck Taylor star)? Does the record evidence establish the significance of other attributes?

(7) Did the ID appropriately consider the strength of the '753 trademark in analyzing infringement?

In addressing these issues, the parties are: (1) Requested to make specific reference to the evidentiary record and to cite relevant authority, especially authority relevant to trade dress (*i.e.,* product design) cases; and (2) to follow the ALJ's finding and only consider the results of one secondary meaning survey, *i.e.,* Ms. Butler's ''CBSC only'' survey.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that results in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respective respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review that specifically address the Commission's questions set forth in this notice. The submissions should be concise and thoroughly referenced to

the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, and such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to: (1) State the HTSUS numbers under which the accused articles are imported; and (2) supply a list of known importers of the accused products. The written submissions and proposed remedial orders must be filed no later than close of business 14 days after the date this notice issues. Reply submissions must be filed no later than the close of business seven days later. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–936'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: February 3, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–02465 Filed 2–8–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On February 2, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Utah in the lawsuit entitled *United States and State of Utah* v. *Salt Lake County, Utah,* Civil Action No. 2:16cv87BCW.

The United States filed this lawsuit under the Clean Water Act. The complaint seeks injunctive relief and civil penalties. The complaint alleges that the defendant violated the Clean Water Act by failing to comply with the terms and conditions of a National Pollutant Discharge Elimination System (''NPDES'') permit, issued to the County for discharges of storm water from the County's municipal separate storm sewer system (''MS4''). The consent decree requires the defendant to perform injunctive relief to bring it into compliance with its NPDES permit and to pay a $280,000 civil penalty.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Utah* v. *Salt Lake County, Utah,* D.J. Ref. No. 90–5–1–1–10984. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–02474 Filed 2–8–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0033]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Report of Mail Order Transactions

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 11, 2016

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara J. Boockholdt, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Report of Mail Order Transactions.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. The Department of Justice component is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: The Drug Enforcement Administration (DEA) collects information regarding mail order transactions conducted between a person regulated by the agency and a nonregulated person (that is, someone who does not further distribute the product) involving the chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. Transactions must use, or attempt to use, the United States Postal Service or any private or commercial carrier.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Number of responses	Average time per response (hours)	Total annual burden hours
Paper	10	1.00	10.00
Electronic	88	0.25	22.00
Total	98		32.00

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 32 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: February 4, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–02528 Filed 2–8–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0061]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection Request To Add a Privacy Act Statement and a Paperwork Reduction Act Notice

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 11, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (facsimile: 304–625–5093).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Request to Change III/NGI Base Identifier(s).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1–542.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. This collection is needed to report completion of an identity history

summary. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 114,000 agencies will complete each form within fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 28,500 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: February 4, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–02529 Filed 2–8–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the Workforce Investment Act (WIA) Management Information and Reporting System (OMB Control No. 1205–0420), Extension With Minor Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the 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 [44 U.S.C. 3506(c)(2)(A)]. This program helps 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.

Currently, ETA is soliciting comments concerning the revisions to the WIA Management Information and Reporting System data collection supporting statement to update the burden estimate to account for annual changes in hourly rates for respondents and remove any outdated language referencing updates made to the WIA reporting system prior to its 2013 renewal. No other revisions were made to the package.

On July 22, 2015, the Department issued an information collection request (ICR) for implementing WIOA performance requirements in accordance with section 116. Section 136 of WIA will remain in place until the performance requirements under WIOA have been fully implemented. Because we are using WIA performance measures, we are referring to the reports collected under this collection as ''WIA Reports.'' Generally, WIOA took effect on July 1, 2015 (See WIOA sec. 506(a.)). Sec. 116 of WIOA, which outlines the performance accountability requirements, including the indicators of performance, does not take effect until July 1, 2016 (See WIOA sec. 506(b)(1)). Under the Department's transition authority, in order to provide for an orderly transition from WIA to WIOA, we will require the states to use the WIA performance metrics in WIA sec. 136 to report on WIOA participants for one program year. This means that WIOA participants who became WIOA participants after July 1, 2015, are being measured according to the WIA section 136 performance measures. Once the Department has fully implemented WIOA's performance system, and all reporting requirements under WIA are met, the WIA reporting system will be discontinued. ETA seeks extension and approval of WIA reporting requirements during this transition period. Provisions will cover both individuals who were participants under WIA and new participants who enter the workforce system prior to full implementation of WIOA. For convenience we have included references to both the WIA statute and their corresponding updated sections within WIOA.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 11, 2016.

ADDRESSES: Submit written comments to Karen Staha, Office of Policy Development and Research, Room N–5641, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2917 (this is not a toll-free number). Fax: 202–693–2766. Email: *ETAPerforms@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

FOR FURTHER INFORMATION CONTACT: Luke Murren at 202–693–3733 or *murren.luke@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The accuracy, reliability, and comparability of program reports submitted by States using Federal funds are fundamental elements of good public administration, and are necessary tools for maintaining and demonstrating system integrity. The use of a standard set of data elements, definitions, and specifications at all levels of the workforce system helps improve the quality of performance information that is received by the Department of Labor. The common performance measures are an integral part of ETA's performance accountability system, and ETA will continue to collect from grantees the data on program activities, participants, and outcomes that are necessary for program management and to convey full and accurate information on the performance of workforce programs to policymakers and stakeholders.

This WIA reporting structure includes quarterly (ETA 9090) and annual (ETA 9091) reports as well as a standardized individual record file for program participants, called the Workforce Investment Act Standardized Record Data (WIASRD). The WIASRD is submitted by the States to ETA and includes participant level information on customer demographics, type of services received, and statutorily defined measures of outcomes. This reporting structure will remain in place until the Department of Labor transitions to performance reporting under section 116 of the Workforce Innovation and Opportunity Act (WIOA).

High quality program performance requires the submission of timely, accurate, and high quality data on the characteristics, services received, and outcomes of program participants. Together, the 9091, 9090, and WIASRD comprise the data collected on WIA participants. As such, these data are necessary for tracking and reporting to stakeholders, information on the usage, services provided, and performance of these programs. These data are used to monitor the core purpose of the programs—mainly, tracking how many people found jobs; did people stay employed; and what were their earnings.

This information collection has been classified as a revision with only minor edits made to the supporting statement to account for adjustment in burden estimates based on annual changes in hourly rates for respondents and to

remove all outdated language referencing updates made to the WIA reporting system prior to its 2013 renewal. The remainder of the collection remains unchanged.

Information is collected under the authority of WIA sections 136 [1] and WIA/WIOA sections 169 (172 under WIA), 185, and 189. Section 136 specifically addresses performance and accountability for the WIA Adult, Dislocated Worker (DW), and Youth programs. Sections 169, 185, and 189 provide broad authority to the Secretary of Labor to address performance and accountability issues for all programs authorized under title I.

WIA section 136 establishes a comprehensive performance accountability system, comprised of the activities described in this section, to assess the effectiveness of States and local areas in achieving continuous improvement of workforce investment activities funded under this subtitle, in order to optimize the return on investment of Federal funds in statewide and local workforce investment activities (WIA section 136(a)).

Further, WIA section 136(d) outlines the minimum requirements for the WIA annual reports that States must submit to DOL. The annual reports must reflect:

- The progress of the State in achieving State performance measures, including information on the levels of performance achieved by the State with respect to the core indicators of performance and the customer satisfaction indicator;
- The progress of local areas in the State in achieving local performance measures, including information on the levels of performance achieved by the areas with respect to the core indicators of performance and the customer satisfaction indicator;
- Information on the entry by participants who have completed training services provided under WIA section 134(d)(4) (superseded by WIOA section134(c)(3)) into unsubsidized employment related to the training received;
- Data on the wages at entry into employment for participants in workforce investment activities who entered unsubsidized employment, including the rate of wage replacement for such participants who are dislocated workers;
- Information on the retention and earnings received in unsubsidized employment 12 months after entry into employment;
- A description of performance with respect to the indicators of performance specified in WIA section 136(b)(2)(A) (core indicators of performance) of participants in workforce investment activities who received the training services compared with the performance of participants in workforce investment activities who received only services other than the training services (excluding participants who received only self-service and informational activities); and
- A summary of performance with respect to the indicators of performance specified in WIA section 136(b)(2)(A) (core indicators of performance) of recipients of public assistance, out-of-school youth, veterans, individuals with disabilities, displaced homemakers, and older individuals.

WIOA section 169 (WIA section 172) directs the Secretary to provide for the continuing evaluation of programs and activities authorized under WIA/WIOA title I, including demonstration grants. WIOA section 169(a) (WIA section 172(a)) specifies that the evaluations must address:

- General effectiveness of such programs and activities in relation to their cost, including the extent to which the programs and activities improve the employment competencies of participants in comparison to comparably-situated individuals who did not participate in such programs and activities and, to the extent feasible, increase the level of total employment over the level that would have existed in the absence of such programs and activities;
- Effectiveness of the performance measures relating to such programs and activities;
- Effectiveness of the structure and mechanisms for delivery of services through such programs and activities;
- Impact of the programs and activities on the community and participants involved;
- Impact of such programs and activities on related programs and activities;
- Extent to which such programs and activities meet the needs of various demographic groups; and
- Such other factors as may be appropriate.

WIA/WIOA section 185 broadly addresses reports, recordkeeping, and investigations across programs authorized under title I of the Act. The provisions of section 185:

- Require the Secretary to ensure that all elements of the information required for reports be defined and reported uniformly (WIA/WIOA section 185(d)(2));
- Direct each State, each local board, and each recipient (other than a sub-recipient, sub-grantee, or contractor of a recipient) to prescribe and maintain comparable management information systems, in accordance with the guidelines that shall be prescribed by the Secretary designed to facilitate the uniform compilation, cross tabulation, and analysis of programmatic, participant, and financial data, on statewide, local area, and other appropriate bases necessary for reporting, monitoring, and evaluating purposes, including data necessary to comply with WIA/WIOA section 188 (WIA/WIOA section 185(c)(2));
- Require that recipients of funds under title I of WIA/WIOA shall maintain such records and submit such reports in such form and containing such information as the Secretary may require regarding the performance of programs and activities carried out under title I of WIA/WIOA (section 185(a)(2));
- Compel States to submit to the Secretary on a quarterly basis, a summary of the reports submitted to the Governor under WIA/WIOA sections 185(e)(1) and 185(e)(2);
- Specify that the reports shall include information about programs and activities carried out under title I of WIA/WIOA pertaining to:

—Relevant demographic characteristics (including race, ethnicity, sex, and age) and other related information regarding participants;
—Programs and activities in which participants are enrolled, and the length of time that participants are engaged in such programs and activities;
—Outcomes of the programs and activities for participants, including the occupations of participants and placement for participants in nontraditional employment;
—Specified costs of the programs and activities; and
—Information necessary to prepare reports to comply with WIA/WIOA

[1] Although WIOA took effect July 1, 2015, under section 506(b)(1), reporting under section 136 of WIA continues until July 1, 2016. Under the Department's transition authority, in order to provide for an orderly transition from WIA to WIOA, we will require the states to use the WIA performance metrics in WIA sec. 136 to report on WIOA participants. This means that WIOA participants who became WIOA participants after July 1, 2015 are being measured according to the WIA section 136 performance measures. Because we are using WIA performance measures, we are referring to the reports collected under this collection as ''WIA Reports.'' Once the Department has fully implemented WIOA's performance system and all WIA reporting requirements have been completed, these WIA Reports will be discontinued.

section 188 and 29 CFR part 38 (WIA/WIOA sections 185(d)(1) and (a–e)).

WIA/WIOA section 189 requires the Secretary to prepare and submit to Congress an annual report regarding the programs and activities carried out under title I of WIA/WIOA. The report must include:

- A summary of the achievements, failures, and problems of the programs and activities in meeting the objectives of WIA/WIOA title I;
- A summary of major findings from research, evaluations, pilot projects, and experiments conducted under WIA/WIOA title I in the fiscal year prior to the submission of the report;
- Recommendations for modifications in the programs and activities based on analysis of such findings; and
- Such other recommendations for legislative or administrative action as the Secretary determines to be appropriate.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: extension with minor revisions.

Title: WIA Management Information and Reporting System.

OMB Number: 1205–0420.

Affected Public: State governments.

Form(s): ETA–9090 and ETA–9091.

Total Annual Respondents: 53.

Annual Frequency: Quarterly.

Total Annual Responses: 424.

Average Time per Response: 36 minutes.

Estimated Total Annual Burden Hours: 619,430.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–02420 Filed 2–8–16; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–011)]

NASA Advisory Council; Human Exploration and Operations Committee; Research Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Research Subcommittee of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Subcommittee reports to the Human Exploration and Operations Committee.

DATES: Monday March 7, 2016, 9:00 a.m.–4:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 7H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0826, or *bcarpenter@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 844–467–6272 or toll number 720–259–6462, passcode: 535959, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com*, the meeting number is 999 705 066, and the password is MondayMarch7@9 (case sensitive). The agenda for the meeting includes the following topics:

- From International Space Station (ISS) to Cis-Lunar Space
- Evolvable Mars Campaign
- Life Sciences Beyond ISS
- Physical and Engineering Sciences Beyond ISS

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Illinois, Minnesota, Missouri, New Mexico and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Dr. Bradley Carpenter via email at *bcarpenter@nasa.gov* or by fax at (202) 358–2886. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Dr. Carpenter via email or fax as noted above. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–02557 Filed 2–8–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–010)]

NASA Advisory Council; Human Exploration and Operations Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Human Exploration and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Wednesday, March 2, 2016, 9:30 a.m.–6:00 p.m.; and Thursday, March 3, 2016, 8:30 a.m.–12:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, Glennan Conference Room, 1Q39, 300 E Street SW., Washington, DC 20546

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2245, or *bette.siegel@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 1–888–455–6733 or toll access number 1–210–839–8935, and then the participant passcode: NAC HEOC, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 994 395 902, and the password is Exploration@2016 (case sensitive).

The agenda for the meeting includes the following topics:

- Human Exploration Progress and Plans
- Budget Status
- NASA Program Management Process Update

Attendees will be required to sign a register and comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Illinois, Minnesota, Missouri, New Mexico and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position; and home address to Dr. Bette Siegel via email at *bette.siegel@nasa.gov.* U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Dr. Bette Siegel via email at *bette.siegel@nasa.gov.* It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–02556 Filed 2–8–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Education and Human Resources Program Monitoring Clearance

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection. This is the **second notice** for public comment; the first was published in the **Federal Register** at 80 FR 69701 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

For Additional Information: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

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.

SUPPLEMENTARY INFORMATION:

Title of Collection: Education and Human Resources Program Monitoring Clearance.

OMB Approval Number: 3145–0226.

Type of Request: Intent to seek approval to renew an information collection.

Abstract: The National Science Foundation (NSF) requests establishment of program accountability data collections that describe and track the impact of NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (*e.g.,* pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among

United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

The scope of this information collection request will primarily cover descriptive information gathered from education and training (E&T) projects that are funded by NSF. NSF will primarily use the data from this collection for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), the NSF's Office of the Inspector General, and as a basis for either internal or third-party evaluations of individual programs.

The collections will generally include three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study or for internal evaluation); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post-NSF-funding-level impacts).

Use of the Information: This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2014–2018 Strategic Plan may be found at: *http://www.nsf.gov/pubs/2014/nsf14043/nsf14043.pdf.*

Since this collection will primarily be used for accountability and evaluation purposes, including responding to queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under this collection will serve as baseline data for separate research and evaluation studies.

NSF-funded contract or grantee researchers and internal or external evaluators in part may identify control, comparison, or treatment groups for NSF's E&T portfolio using some of the descriptive data gathered through this collection to conduct well-designed, rigorous research and portfolio evaluation studies.

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local, or tribal government.

Number of Respondents: 7,284.

Burden on the Public: NSF estimates that a total reporting and recordkeeping burden of 58,449 hours will result from activities to monitor EHR STEM education programs. The calculation is shown in table 1.

TABLE 1—ANTICIPATED PROGRAMS THAT WILL COLLECT DATA ON PROJECT PROGRESS AND OUTCOMES ALONG WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS PER COLLECTION PER YEAR

Collection title	Number of respondents	Number of responses	Annual hour burden
Advancing Information STEM Learning (AISL) Monitoring System	155	155	1,921
Centers of Research Excellence in Science and Technology (CREST) and Historically Black Colleges and Universities Research Infrastructure for Science and Engineering (HBCU–RISE) Monitoring System.	40	40	1,810
Graduate STEM Fellows in K–12 Education (GK–12) Monitoring System	1,267	1,267	3,529
Integrative Graduate Education and Research Traineeship Program (IGERT) Monitoring System.	3,307	3,307	12,282
Louis Stokes Alliances for Minority Participation (LSAMP) Monitoring System	563	563	12,949
Louis Stokes Alliances for Minority Participation Bridge to the Doctorate (LSAMP–BD) Monitoring System.	55	55	2,090
Robert Noyce Teacher Scholarship Program (Noyce) Monitoring System	422	422	5,908
Research in Disabilities Education (RDE) Monitoring System	12	12	1,368
Scholarships in Science, Technology, Engineering, and Mathematics (S–STEM) Monitoring System.	500	1,000 (500 respondents × 2 responses/yr.).	6,000
Science, Technology, Engineering, and Mathematics Talent Expansion Program (STEP) Monitoring System.	277	277	6,648
Transforming Undergraduate Education in Science, Technology, Engineering, and Mathematics (TUES) Monitoring System.	686	686	2,744
Additional Collections not Specified	900	900	1,200
Total	8,184	8,684	58,449

The total estimate for this collection is 58,449 annual burden hours. The average annual reporting burden is between 1.7 and 114 hours per ''respondent,'' depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants.

Dated: February 3, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–02520 Filed 2–8–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0198]

Revisions to Radioactive Waste Management Guidance for NRC Staff

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-final section revision; issuance

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to several sections in Chapter 11, ''Radioactive Waste Management,'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' On September 17, 2014, the NRC published for public comment the proposed revisions to Chapter 11 of the SRP. The NRC made changes to the proposed revisions after the consideration of comments received. Among other changes, the revisions include (1) revision of the title of SRP Section 11.1 to ''Coolant Source Terms,'' (2) implementation of Interim Staff Guidance (ISG), COL/DC–ISG–013, and (3) the revision also harmonizes SRP Section 11.2 with Branch Technical Position (BTP) 11.6 regarding the guidance of COL/DC–ISG–013 for calculating doses to members of the public and identifying acceptable criteria in assessing the radiological consequences of accidental releases due to tank failures.

DATES: The effective date of this Standard Review Plan update is March 10, 2016.

ADDRESSES: Please refer to Docket ID NRC–2014–0198 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0198. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mark Notich, telephone: 301–415–3053; email: *Mark.Notich@nrc.gov;* or Nishka Devaser, telephone: 301–415–5196; email: *Nishka.Devaser@nrc.gov;* both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A summary of the comments and the NRC staff's disposition of the comments are available in a separate document, ''Response to Public Comments on Draft SRP Sections in Chapter 11'' (ADAMS Accession No. ML15033A417).

The Office of New Reactors and the Office of Nuclear Reactor Regulation are revising these sections from their current revisions. Details of specific changes in the proposed revisions are included at the end of each of the proposed sections.

The changes to this SRP chapter reflect current NRC staff's review methods and practices based on lessons learned from the NRC's reviews of design certification and combined license applications completed since the last revision of this chapter.

II. Backfitting and Finality Provisions

Issuance of these revised SRP sections does not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.

The SRP provides guidance to the staff on how to review an application for the NRC's regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. The NRC staff has no intention to impose the SRP positions on current licensees and regulatory approvals either now or in the future.

The staff does not intend to impose or apply the positions described in the SRP to existing (already issued) licenses and regulatory approvals. Therefore, the issuance of a final SRP—even if considered guidance that is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed in the next paragraph—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No.
Section 11.1, ''Coolant Source Terms,'' Revision 4	ML15029A022
Section 11.2, ''Liquid Waste Management System,'' Revision 5	ML15029A032
Section 11.3, ''Gaseous Waste Management System,'' Revision 4	ML15029A039
Section 11.4, ''Solid Waste Management System,'' Revision 4	ML15029A174
Section 11.5, ''Process and Effluent Radiological Monitoring Instrumentation and Sampling Systems,'' Revision 6	ML15029A182
BTP 11–3, ''Design Guidance for Solid Radioactive Waste Management Systems Installed in Light-Water-Cooled Nuclear Power Reactor Plants,'' Revision 4*.	ML15027A198
BTP 11–5, ''Postulated Radioactive Releases Due to a Waste Gas System Leak or Failure,'' Revision 4*	ML15027A302
BTP 11–6, ''Postulated Radioactive Releases due to Liquid Containing Tank Failures,'' Revision 4*	ML15027A401

* No changes resulting from public comments. See documents in the package at ADAMS Accession Number ML14113A532 to see changes made since last revision.

Dated at Rockville, Maryland, this 8th day of January, 2016.

For the Nuclear Regulatory Commission.

Kimyata Morgan Butler,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2016–02588 Filed 2–8–16; 8:45 am]

BILLING CODE 3410–16–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0232]

Revision Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to the following section in Chapter 19 of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 19.0, ''Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors.''

DATES: The effective date of this Standard Review Plan update is March 10, 2016.

ADDRESSES: Please refer to Docket ID NRC–2012–0232 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0232. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The final revision for the SRP, Section 19.0, Revision 3, ''Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors,'' is available in ADAMS under Accession No. ML15089A068. A redline strikeout comparing the proposed revision to the final revision can be found in ADAMS under Accession No. ML15089A115. The responses to public comments can be found in ADAMS under Accession No. ML15086A472.
- 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.
- The NRC posts its issued staff guidance on the NRC's external Web page: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.*

FOR FURTHER INFORMATION CONTACT: Mark Notich, telephone: 301–415–3053, email: *Mark.Notich@nrc.gov* or Nishka Devaser, telephone: 301–415–5196, email: *Nishka.Devaser@nrc.gov,* both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 2014 (79 FR 72709), the NRC published for public comment a proposed revision to this section of the SRP. The staff made changes to the proposed revision after consideration of comments received. A summary of the comments and the staff's disposition of the comments are available in a separate document, ''Response to Public Comments on Draft SRP Section 19.0'' (ADAMS Accession No. ML15086A472).

The changes to this SRP section reflect current staff review methods and practices based on lessons learned from NRC reviews of design certification (DC) and combined license (COL) applications completed since the last revision of this chapter. Changes include: (1) Incorporation of guidance previously published in Interim Staff Guidance (ISG) DC/COL–ISG–003 (ADAMS Accession No. ML081430087) concerning the review of probabilistic risk assessment (PRA) information and severe accident assessments submitted to support DC and COL applications, (2) incorporation of guidance for DC and COL applicants previously published in ISG DC/COL–ISG–020 (ADAMS Accession No. ML100491233) concerning review of information from PRA-based seismic margin analyses submitted in support of DC and COL applications, (3) incorporation of guidance previously published in ISG Digital Instrumentation and Controls (DI&C)/COL–ISG–003 (ADAMS Accession No. ML080570048) concerning review of DI&C system PRAs, including treatment of common cause failure (CCFs) in PRAs and uncertainty analysis associated with new reactor digital systems, (4) incorporation of additional procedures for review of PRA information and severe accident assessments developed during NRC reviews of DC and COL applications completed after Revision 2 of SRP Section 19.0 was issued, (5) additional proposed acceptance criteria and review procedures for the staff's review of an applicant's assessment of

risk from accidents that could affect multiple modules in facilities with small modular integral pressurized water reactors (iPWRs), (6) additional review procedures for the staff's review of the results of the PRA for non-power modes of operation, and (7) several editorial changes to ensure that there is no confusion between text in this SRP section and text in the ASME/ANS PRA Standard currently endorsed by the NRC and referenced in this SRP section. The ISG DC/COL–ISG–003 and ISG DI&C/COL–ISG–003 have now been superseded by SRP 19.0, Revision 3 and should no longer be used. The ISG DC/COL–ISG–020 contains guidance for COL holders which has not been superseded by SRP 19.0, Revision 3 and should still be used by COL holders.

II. Backfitting and Issue Finality

Issuance of this final SRP does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations:

1. *The SRP positions, does not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52, with certain exclusions, were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 21st day of January, 2016.

For the Nuclear Regulatory Commission.

Tanya Smith,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2016–02564 Filed 2–8–16; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from November 1, 2015, to November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

11. Department of Homeland Security (Sch. A, 213.3111)

(d) General—

(1) Not to exceed 1,000 positions to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber-related infrastructure interdependency analysis requiring unique qualifications currently not established by OPM. Positions will be at the General Schedule (GS) grade levels 09–15. Appointments may be made under this authority until March 31, 2017.

Schedule B

No Schedule B Authorities to report during November 2015.

Schedule C

The following Schedule C appointing authorities were approved during November 2015.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Assistant Secretary for Congressional Relations.	Legislative Analyst	DA160009	11/9/2015
	Office of the Under Secretary for Natural Resources and Environment.	Confidential Assistant	DA160010	11/9/2015
	Office of Communications	Scheduler	DA160012	11/24/2015
	Office of the Deputy Secretary	Special Assistant	DA160013	11/24/2015
	Farm Service Agency	State Executive Director—Oklahoma.	DA160015	11/24/2015
DEPARTMENT OF COMMERCE	Office of the Under Secretary	Senior Advisor (2)	DC160017	11/5/2015
			DC160021	11/13/2015
	Office of Policy and Strategic Planning.	Special Assistant	DC160020	11/10/2015
	Office of Executive Secretariat	Special Advisor	DC160024	11/18/2015
	Office of Scheduling and Advance	Special Assistant	DC160027	11/18/2015
		Scheduler	DC160029	11/23/2015
	Office of Assistant Secretary for Enforcement and Compliance.	Senior Advisor	DC160030	11/23/2015
	Office of the Director	Senior Advisor for Minority-Owned Business Enterprise Policy.	DC160031	11/25/2015
		Associate Director of Legislative, Education and Intergovernmental Affairs.	DC160033	11/25/2015
COMMISSION ON CIVIL RIGHTS	Office of Commissioners	Special Assistant	CC160001	11/18/2015
CONSUMER PRODUCT SAFETY COMMISSION.	Office of Commissioners	Special Assistant (Legal)	PS160002	11/12/2015
DEPARTMENT OF DEFENSE	Office of the Secretary	Deputy White House Liaison	DD160016	11/13/2015
	Office of the Under Secretary of Defense (Comptroller).	Special Assistant (Budget and Appropriations Affairs).	DD160015	11/16/2015
DEPARTMENT OF EDUCATION	Office of the Under Secretary	Policy Advisor, White House Initiative on American Indian and Alaska Native.	DB160004	11/12/2015
		Executive Director, White House Initiative on Asian Americans and Pacific Islanders.	DB160005	11/13/2015
		Director of Strategic Communications.	DB160006	11/23/2015
	Office of the Secretary	Deputy Director, Strategic Partnership.	DB160008	11/23/2015
		Chief of Staff, Strategic Partnerships.	DB160011	11/24/2015
	Office of Legislation and Congressional Affairs.	Special Assistant	DB160009	11/24/2015
	Office of Career Technical and Adult Education.	Director of Policy	DB160012	11/24/2015
		Director of Strategic Initiatives	DB160013	11/24/2015
	Office of Planning, Evaluation and Policy Development.	Senior Policy Advisor	DB160010	11/27/2015
DEPARTMENT OF ENERGY	Office of Assistant Secretary for International Affairs.	Chief of Staff	DE160004	11/4/2015
	Office of Public Affairs	Press Assistant	DE160012	11/4/2015
	Office of Energy Policy and Systems Analysis.	Special Assistant	DE160013	11/4/2015
	Office of Scheduling and Advance	Special Assistant and Scheduler	DE160014	11/4/2015
		Senior Advance Lead	DE160019	11/4/2015
		Director of Operations	DE160025	11/18/2015
		Special Assistant	DE160035	11/24/2015
		Deputy Scheduler	DE160024	11/25/2015
	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Special Assistant	DE160007	11/6/2015
	Office of the Secretary	Special Advisor	DE160015	11/6/2015
	Office of Assistant Secretary for Fossil Energy.	Special Assistant	DE160023	11/12/2015
	Office of Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Assistant	DE160028	11/12/2015
	Office of Under Secretary for Science.	Special Advisor	DE160029	11/13/2015
	Loan Programs Office	Special Advisor	DE160030	11/13/2015
		Senior Advisor	DE160031	11/23/2015

Agency name	Organization name	Position title	Authorization No.	Effective date
ENVIRONMENTAL PROTECTION AGENCY.	Scheduling Staff	Deputy Director of Scheduling	EP160009	11/18/2015
	Advance Staff	Deputy Director for Advance	EP160008	11/20/2015
EXPORT–IMPORT BANK	Office of the Chairman	Project Manager and Executive Assistant.	EB160001	11/6/2015
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Secretary	Special Assistant (2)	DH160015	11/6/2015
			DH160019	11/18/2015
	Centers for Medicare and Medicaid Services.	Senior Advisor	DH160016	11/9/2015
	Office of Commissioner, Administrator for Children, Youth and Families.	Senior Policy Advisor	DH160018	11/12/2015
	Office of the Assistant Secretary for Children and Families.	Special Assistant	DH160022	11/19/2015
DEPARTMENT OF HOMELAND SECURITY.	Office of the Assistant Secretary for Policy.	Special Assistant (3)	DM160016	11/4/2015
			DM160018	11/4/2015
			DM160019	11/4/2015
		Deputy Director for Asia-Pacific	DM160030	11/16/2015
	Office of the Chief of Staff	Travel Operations Coordinator	DM160028	11/12/2015
		Advance Officer	DM160033	11/16/2015
	United States Immigration and Customs Enforcement.	Deputy Chief of Staff	DM160029	11/20/2015
DEPARTMENT OF THE INTERIOR	Office of the Assistant Secretary, Fish and Wildlife and Parks.	Chief of Staff	DI160010	11/2/2015
	Secretary's Immediate Office	Deputy Director	DI160003	11/4/2015
		Deputy Director—Advance	DI160016	11/24/2015
	Bureau of Safety and Environmental Enforcement.	Advisor	DI160009	11/16/2015
	Office of the Deputy Secretary	Advisor	DI160014	11/24/2015
DEPARTMENT OF JUSTICE	Community Relations Service	Senior Counsel	DJ160018	11/5/2015
	Office of the Attorney General	Special Assistant	DJ160019	11/13/2015
	Office of Public Affairs	Media Affairs Coordinator	DJ160011	11/16/2015
	Community Relations Service	Senior Advisor	DJ160022	11/17/2015
DEPARTMENT OF LABOR	Office of the Secretary	Special Advisor	DL160010	11/5/2015
	Office of Public Affairs	Digital Content Manager	DL160013	11/16/2015
	Employment and Training Administration.	Senior Policy Advisor	DL160017	11/30/2015
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of Communications	Senior Advisor/Press Secretary	NN160008	11/12/2015
NATIONAL ENDOWMENT FOR THE ARTS.	Office of the Chairman	Confidential Assistant	NA160004	11/9/2015
OFFICE OF MANAGEMENT AND BUDGET.	Health Division	Confidential Assistant	BO160001	11/4/2015
	Staff Offices	Press Secretary	BO160005	11/19/2015
OFFICE OF PERSONNEL MANAGEMENT.	Office of Congressional, Legislative, and Intergovernmental Affairs.	Senior Congressional Relations Officer.	PM160005	11/4/2015
DEPARTMENT OF STATE	Office of the Chief of Protocol	Protocol Officer (Visits)	DS160011	11/13/2015
	Office of the Lead Coordinator for Iran Nuclear Implementation.	Foreign Affairs Officer	DS160009	11/17/2015
		Deputy Lead Coordinator	DS160010	11/17/2015
	Office of the Under Secretary for Management.	Staff Assistant	DS160008	11/20/2015
DEPARTMENT OF TRANSPORTATION	Office of Assistant Secretary for Transportation Policy.	Policy Advisor and Director of Strategic Initiatives.	DT160004	11/4/2015
	Immediate Office of the Administrator.	Associate Administrator for External Affairs and Senior Advisor.	DT160006	11/4/2015
		Special Assistant	DT160007	11/4/2015
		Advisor for Governmental Affairs	DT160012	11/25/2015
	Office of the Secretary	Director of Scheduling	DT160008	11/10/2015
DEPARTMENT OF THE TREASURY	Office of the Assistant Secretary (Public Affairs).	Senior Speechwriter	DY160012	11/13/2015
		Special Assistant	DY160014	11/17/2015
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Director Oversight	DV160007	11/13/2015

The following Schedule C appointing authorities were revoked during November 2015.

Agency name	Organization name	Position title	Authorization No.	Vacate date
DEPARTMENT OF AGRICULTURE.	Office of Communications	Scheduler	DA140111	11/28/2015
DEPARTMENT OF COMMERCE	Office of Policy and Strategic Planning.	Confidential Assistant	DC140138	11/20/2015
	Office of Scheduling and Advance	Scheduler	DC150157	11/23/2015
		Special Assistant	DC150165	11/28/2015
	Office of Assistant Secretary for Industry and Analysis.	Director of the Advisory Committee in Industry and Analysis.	DC150058	11/28/2015
	Office of Executive Secretariat	Special Assistant	DC140126	11/28/2015
CONSUMER PRODUCT SAFETY COMMISSION.	Office of Commissioners	Special Assistant (Legal)	PS140015	11/28/2015
	Office of Executive Director	Supervisory Public Affairs Specialist.	PS090009	11/30/2015
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Secretary	Deputy White House Liaison	DD150118	11/14/2015
		Protocol Officer	DD130068	11/14/2015
DEPARTMENT OF EDUCATION	Office of the Under Secretary	Executive Director of the White House Initiative on Asian Americans and Pacific Islanders.	DB100026	11/07/2015
		Confidential Assistant	DB140004	11/28/2015
	Office of Career Technical and Adult Education.	Special Assistant (2)	DB140089	11/28/2015
			DB150042	11/28/2015
	Office of Innovation and Improvement.	Special Assistant	DB150063	11/28/2015
	Office of Legislation and Congressional Affairs.	Special Assistant	DB140026	11/28/2015
DEPARTMENT OF ENERGY	Office of Assistant Secretary for Congressional and Intergovernmental Affairs.	Special Advisor	DE140096	11/14/2015
	Office of Assistant Secretary for International Affairs.	Senior Advisor	DE150080	11/14/2015
	Office of Management	Lead Advance Representative	DE110120	11/14/2015
		Special Assistant (2)	DE140039	11/14/2015
			DE150094	11/28/2015
		Deputy Director, Office of Scheduling and Advance.	DE140101	11/28/2015
	Office of Under Secretary for Science.	Special Assistant	DE140006	11/14/2015
	Office of Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Advisor for Technology to Market.	DE150017	11/20/2015
	Office of the Secretary	White House Liaison	DE140045	11/28/2015
EXPORT–IMPORT BANK	Office of the Chairman	Special Assistant	EB140010	11/30/2015
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	Special Assistant (2)	DH130069	11/13/2015
			DH120117	11/30/2015
	Office of the Assistant Secretary for Public Affairs.	Online Communications and Outreach Advisor.	DH140071	11/14/2015
	Office of the Secretary	Confidential Assistant	DH150023	11/22/2015
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Special Assistant	DM150049	11/09/2015
	Office of the Secretary	Special Assistant	DM150226	11/13/2015
	Office of the Chief of Staff	Advance Officer	DM150017	11/28/2015
		Travel Operations Coordinator	DM140223	11/28/2015
	Office of the Executive Secretariat	Secretary Briefing Book Coordinator.	DM140133	11/28/2015
	United States Customs and Border Protection.	Special Assistant	DM140205	11/28/2015
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Deputy Chief of Staff	DU140037	11/17/2015
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Deputy Director	DI120019	11/01/2015
DEPARTMENT OF JUSTICE	Office of the Deputy Attorney General.	Confidential Assistant to the Deputy Attorney General.	DJ100159	11/14/2015
	Office of Public Affairs	Press Assistant	DJ140082	11/15/2015
DEPARTMENT OF LABOR	Office of the Secretary	Special Assistant	DL140093	11/04/2015
	Office of Public Affairs	Special Assistant	DL140076	11/18/2015
OFFICE OF MANAGEMENT AND BUDGET.	Health Division	Confidential Assistant	BO140025	11/11/2015
SMALL BUSINESS ADMINISTRATION.	Office of Government Contracting and Business Development.	Senior Advisor	SB140008	11/28/2015
DEPARTMENT OF STATE	Office of the Counselor	Special Assistant	DS140127	11/28/2015

Agency name	Organization name	Position title	Authorization No.	Vacate date
DEPARTMENT OF TRANSPORTATION.	Office of the Administrator	Associate Administrator for Communications and Legislative Affairs.	DT140058	11/14/2015
		Director for Governmental Affairs	DT140046	11/28/2015
	Office of the Assistant Secretary for Transportation Policy.	Deputy Director for Public Engagement.	DT130040	11/14/2015

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–02609 Filed 2–8–16; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Civilian Acquisition Workforce Personnel Demonstration Project in the Department of Defense: Correction

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of amendments to the project plan for the Department of Defense (DoD) Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo); Correction.

SUMMARY: The U.S. Office of Personnel Management published a document in the **Federal Register** on March 31, 2015, announcing amendments to a demonstration project plan for the civilian acquisition workforce of the Department of Defense. The document requires three technical corrections that will ensure access for the entirety of an organization to participate.

FOR FURTHER INFORMATION CONTACT: Zelma Moore, U.S. Office of Personnel Management; 1900 E Street NW., Room 7456; Washington, DC 20415; (202) 606–1157.

Correction

In FR Doc. 2015–07314, published on Tuesday, March 31, 2015, in Volume 80, Number 61, page 17114, make the following corrections:

1. On page 17114 in Table 1A, first line in the section titled ''Navy,'' third column, delete the location of ''Arlington, VA'' and replace with ''All locations''.

2. On the same page in Table 1A, second line in the section titled ''Navy,'' third column, delete the location of ''Patuxent River, MD'' and replace with ''All locations''.

3. On the same page in Table 1A, third line in the section titled ''Navy,'' third column, delete the location of ''San Diego, CA'' and replace with ''All locations''.

U.S. Office of Personnel Management.

Shanaz Porter,

Group Manager, Forecasting and Methods and Acting Group Manager, Talent Management.

[FR Doc. 2016–02610 Filed 2–8–16; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0099, Initial Certification of Full-Time School Attendance, RI 25–41

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change, of a currently approved information collection request (ICR) 3206–0099, Initial Certification of Full-Time School Attendance. As required by the Paperwork Reduction Act of 1995, (Pub. Law 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on October 14, 2015 at Volume 80 FR 61851 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 10, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Initial Certification of Full-Time School Attendance.

OMB Number: 3206–0099.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,200.

Estimated Time per Respondent: 90 minutes.

Total Burden Hours: 1,800.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–02611 Filed 2–8–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0138, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0138, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on September 25, 2015 at volume 80 FR 357886 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 10, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 30–9 informs former disability annuitants of their right to request restoration under title 5, U.S.C. Sections 8337 and 8455. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management

Title: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity.

OMB Number: 3206–0138.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 200.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 200.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–02612 Filed 2–8–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Annuitant's Report of Earned Income, RI 30–2, 3206–0034

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection (ICR) 3206–0034, Annuitant's Report of Earned Income. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until April 11, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2347E, or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 30–2, Annuitant's Report of Earned Income is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits under title 5, U.S.C Sections 8337 and 8455. It also specifies the conditions to

be met and the documentation required for a person to request reinstatement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Annuitant's Report of Earned Income.

OMB Number: 3206–0034.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 21,000.

Estimated Time per Respondent: 35 minutes.

Total Burden Hours: 12,250.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–02615 Filed 2–8–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0228, CSRS/FERS Documentation in Support of Disability Retirement Application, SF 3112

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0228, CSRS/FERS Documentation in Support of Disability Retirement Application, SF 3112. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on October 14, 2015 at Volume 80 FR 61852 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 10, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: SF 3112 collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement. The applicant will only complete Standard Forms 3112A and 3112C. Standard Forms 3112B, 3112D and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: CSRS/FERS Documentation in Support of Disability Retirement Application.

OMB Number: 3206–0228.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: SF 3112A = 1,350; SF 3112C = 12,100.

Estimated Time per Respondent: SF 3112A = 30 minutes; SF 3112C = 60 minutes.

Total Burden Hours: 12,775.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–02613 Filed 2–8–16; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31982; 812–14376]

MassMutual Premiere Funds, et al.; Notice of Application

February 3, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers. The order would also supersede a prior order.[1]

Applicants: MassMutual Premier Funds, MassMutual Select Funds, MML Series Investment Fund, and MML Series Investment Fund II, (each, a ''Trust,'' and collectively, the ''Trusts''), each a Massachusetts business trust registered under the Act as an open-end management investment company with multiple series (each a ''Series''), and MML Investment Advisers, LLC, a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Manager,'' and collectively with the Trusts, the ''Applicants'').

Filing Dates: The application was filed October 17, 2014, and amended on March 9, 2015, June 15, 2015 and October 13, 2015.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a

[1] MassMutual Institutional Funds *et al.,* Investment Company Act Release Nos. 25211 (October 16, 2001) (notice), 25260 (November 9, 2001) (order), amended by MassMutual Institutional Funds *et al.,* Investment Company Release Nos. 25665 (July 17, 2002) (notice) and 25699 (August 13, 2002) (order).

hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 26, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 14376, M243, Enfield, CT 06082.

FOR FURTHER INFORMATION CONTACT: Bruce MacNeil, Senior Counsel, at (202) 551–6817, or James M. Curtis, Branch Chief, at (202) 551–6712 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Manager will serve as the investment adviser to each Subadvised Series pursuant to an investment advisory agreement with each Trust (each, an ''Investment Management Agreement,'' and collectively, the ''Investment Management Agreements'').[2] The Manager will provide the Subadvised Series with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Subadvised Series' board of directors (''Board''). The Management Agreements permit the Manager, subject to the approval of the Board, to delegate to one or more Sub-Advisers the responsibility to provide the day-to-day portfolio investment management of each Subadvised Series, subject to the supervision and direction of the Manager.[3] The primary responsibility for managing the Subadvised Series will remain vested in the Manager. The Manager will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Manager, subject to Board approval, to hire a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, pursuant to Sub-Advisory Agreements and materially amend Sub-Advisory Agreements with Non-Affiliated Sub-Advisers and Wholly-Owned Sub-Advisers without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[4] Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Manager and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers, and (c) the fee paid to each Affiliated Sub-Adviser.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the Application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Manager's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02489 Filed 2–8–16; 8:45 am]

BILLING CODE 8011–01–P

[2] Applicants request relief with respect to the named Applicants, any future Series of the Trusts and any other existing or future registered open-end management company or series thereof that intends to rely on the requested order in the future and that: (a) is advised by the Manager or by any entity controlling, controlled by, or under common control with the Manager or its successor (included in the term ''Manager''); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (any such series, a ''Subadvised Series''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] A ''Sub-Adviser'' for a Series is (1) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Manager for that Series, or (2) a sister company of the Manager for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Manager (each of (1) and (2) a ''Wholly-Owned Sub Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) an investment sub-adviser for that Series that is not an ''affiliated person'' (as such term is defined in Section 2(a)(3) of the Act) of the Series or the Adviser, except to the extent that an affiliation arises solely because the sub-Adviser serves as a sub-adviser to one or more Series (each a ''Non-Affiliated Sub-Adviser'' and collectively, the ''Non-Affiliated Sub-Advisers'') .

[4] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or the Manager, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (''Affiliated Sub-Adviser'').

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31980; 812–14433]

Medallion Financial Corp.; Notice of Application

February 3, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY: *Summary of the Application:* Applicant, Medallion Financial Corp. (the ''Company''), requests an order to permit it to issue restricted shares of its common stock to its officers and

employees under the terms of an employee compensation plan.

DATES: *Filing Dates:* The application was filed on March 17, 2015, and amended on July 15, 2015, September 24, 2015, and December 11, 2015.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 29, 2016, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicant, Marisa T. Silverman, General Counsel, Medallion Financial Corp., 437 Madison Avenue, 38th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Daniele Marchesani, Branch Chief, at (202) 551–6821, (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicant's Representations

1. The Company, a Delaware corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The Company is a specialty finance company that has a leading position in originating, acquiring, and servicing loans that finance taxicab medallions and various types of commercial businesses. The Company currently operates its business through three wholly-owned consolidated subsidiaries and one wholly-owned unconsolidated portfolio company. Shares of the Company's common stock are traded on the NASDAQ Global Select Market under the symbol ''TAXI.'' As of March 10, 2015, there were 24,771,864 shares of the Company's common stock outstanding. As of that date, the Company had 151 employees, including employees of its wholly-owned subsidiaries (''Wholly-Owned Subsidiaries'').

2. The Company currently has a eight-member board of directors (the ''Board'') of whom three are ''interested persons'' of the Company within the meaning of section 2(a)(19) of the Act and five are not interested persons (the ''Non-interested Directors''). The Company has six directors who are neither officers nor employees of the Company.

3. The Company believes that its successful performance depends on its ability to offer fair compensation packages to its professionals that are competitive with those offered by other investment management businesses. The Company believes that the ability to offer equity-based compensation to its professionals is vital to the Company's future growth and success. The Company wishes to adopt the 2015 Employee Restricted Stock Plan (the ''Plan'') providing for the periodic issuance of shares of restricted stock (*i.e.,* stock that, at the time of issuance, is subject to certain forfeiture restrictions, and thus is restricted as to its transferability until such forfeiture restrictions have lapsed) (the ''Restricted Stock'') for its employees and officers, and employees of its Wholly-Owned Subsidiaries (each a ''Participant,'' and collectively, the ''Participants'').[2]

4. The Plan will authorize the issuance of shares of Restricted Stock subject to certain forfeiture restrictions. These restrictions may relate to continued employment or service on the Board, achievement of specified performance objectives, or other restrictions deemed by the Committee (as defined below) to be appropriate.[3] The Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the Committee. Except to the extent restricted under the terms of the Plan, a Participant granted Restricted Stock will have all the rights of any other stockholder, including the right to vote the Restricted Stock and the right to receive dividends. During the restriction period, the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by the Participant. Except as otherwise provided for in a Participant's employment agreement or as the Board may determine, upon termination of a Participant's employment or service on the Board during the applicable restriction period, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall be forfeited.

5. The maximum amount of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of the Company on the effective date of the Plan plus 10% of the number of shares of the Company's common stock issued or delivered by the Company (other than pursuant to compensation plans) during the term of the Plan.[4] The Plan limits the total number of shares that may be awarded to any single Participant in a fiscal year to 200,000 shares. In addition, no Restricted Stock Participant may be granted more than 25% of the shares reserved for issuance under the Plan. The Plan will be administered by the Committee, which, upon approval of the required majority, as defined in section 57(o) of the Act,[5] of the Board, will award shares of Restricted Stock to the Participants from time to time as part of the Participants' compensation based on a Participant's actual or expected performance and value to the Company.

6. Each issuance of Restricted Stock under the Plan will be approved by the required majority, as defined in section 57(o) of the Act, of the Company's directors on the basis that the issuance

[1] The Company was incorporated in Delaware in 1995 and commenced operations on May 29, 1996, in connection with the closing of its initial public offering and simultaneous acquisition of three established finance companies. Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Plan, except as noted in the application, will operate in a manner identical to the operation of the 2009 Employee Plan that is the subject of a prior order received by the Company. *See Medallion Financial Corp.,* Investment Company Act Release Nos. 29201 (Apr. 1, 2010) (notice) and 29258 (Apr. 26, 2010) (order).

[3] The Compensation Committee of the Board (the ''Committee'') is comprised solely of the Non-interested Directors.

[4] For purposes of calculating compliance with this limit, the Company will count as Restricted Stock all shares of its common stock that are issued pursuant to the Plan less any shares that are forfeited back to the Company and cancelled as a result of forfeiture restrictions not lapsing.

[5] The term ''required majority,'' when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

is in the best interests of the Company and its stockholders. The date on which the required majority approves an issuance of Restricted Stock will be deemed the date on which the subject Restricted Stock is granted.

7. The Plan has been approved by the Committee, as well as the Board, including the required majority as defined in section 57(o) of the Act. The Plan will be submitted for approval to the Company's stockholders, and will become effective upon such approval, subject to and following receipt of the order.

Applicant's Legal Analysis

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Plan.

2. Section 23(b) generally prohibits a closed-end management investment company from selling its common stock at a price below its current net asset value (''NAV''). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Plan would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

3. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. The Company requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act.[6] The Company states that the concerns underlying those sections include: (a) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (b) complication of the investment company's structure that made it difficult to determine the value of the company's shares; and (c) dilution of stockholders' equity in the investment company. The Company states that the Plan does not raise concerns about preferential treatment of the Company's insiders because the Plan is a bona fide compensation plan of the type common among corporations generally. In addition, section 61(a)(3)(B) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. The Company states that, for reasons that are unclear, section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. The Company states, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. The Company also asserts that the Plan would not become a means for insiders to obtain control of the Company because the number of shares of the Company issuable under the Plan would be limited as set forth in the application. Moreover, no individual Restricted Stock Participant could be issued more than 25% of the shares reserved for issuance under the Plan.

5. The Company further states that the Plan will not unduly complicate the Company's structure because equity-based compensation arrangements are widely used among corporations and commonly known to investors. The Company notes that the Plan will be submitted to its stockholders for their approval. The Company represents that a concise, ''plain English'' description of the Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to the Company's stockholders. The Company also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''). The Company further notes that the Plan will be disclosed to investors in accordance with the requirements of the Form N–2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, the Company will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act.[7] The Company thus concludes that the Plan will be adequately disclosed to investors and appropriately reflected in the market value of the Company's shares.

6. The Company acknowledges that, while awards granted under the Plan would have a dilutive effect on the stockholders' equity in the Company, that effect would be outweighed by the anticipated benefits of the Plan to the Company and its stockholders. The Company asserts that it needs the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, the Company suggests, in turn are likely to increase the Company's performance and stockholder value. The Company also asserts that equity-based compensation would more closely align the interests of the Company's employees with those of its stockholders. In addition, the Company states that its stockholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plan by the Company's Board.

Section 57(a)(4), Rule 17d–1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) (''57(b) persons''), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d–1, made applicable to BDCs by section 57(i), proscribes participation in a ''joint enterprise or other joint arrangement or profit-sharing plan,'' which includes a stock option or purchase plan. Employees and directors of a BDC are

[6] The Company asks that the order apply also to any future officers and employees of the Company and future employees of the Company's Wholly-Owned Subsidiaries that are eligible to receive Restricted Stock under the Plan. Additionally, to the extent that the Company creates or acquires additional Wholly-Owned Subsidiaries, and to the extent that such future Wholly-Owned Subsidiaries have employees to whom the relief requested herein would otherwise apply, the Company asks that such relief, if granted, be extended to such employees of any future Wholly-Owned Subsidiaries.

[7] The Company will comply with the amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors to the extent adopted and applicable to BDCs. *See* Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8765 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

8. The Company requests an order pursuant to section 57(a)(4) and rule 17d–1 to permit the Company to grant shares of Restricted Stock pursuant to the Plan. The Company states that the Plan, although benefiting the Participants and the Company in different ways, is in the interests of the Company's stockholders because the Plan will help align the interests of the Company's employees and officers with those of its stockholders, which will encourage conduct on the part of those employees and officers designed to produce a better return for the Company's stockholders.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Plan will be authorized by the Company's stockholders.

2. Each issuance of Restricted Stock to a Participant will be approved by the required majority, as defined in section 57(o) of the Act, of the Company's directors on the basis that such issuance is in the best interest of the Company and its stockholders.

3. The amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 25% of the outstanding voting securities of the Company, except that if the amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights issued to the Company's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plan, would exceed 15% of the outstanding voting securities of the Company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 20% of the outstanding voting securities of the Company.

4. The maximum amount of shares of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of the Company on the effective date of the Plan plus 10% of the number of shares of the Company's common stock issued or delivered by the Company (other than pursuant to compensation plans) during the term of the Plan.

5. The Board will review the Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the Plan could have on the Company's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plan would not have an effect contrary to the interests of the Company's stockholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02442 Filed 2–8–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77044; File No. SR–NYSEArca–2016–16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Binary Return Derivatives

February 3, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 27, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to list and trade Binary Return Derivatives (''ByRDs''). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ByRDs. The Exchange proposes to model its ByRDs rules after the approved rules of another options exchange—namely NYSE MKT LLC (''NYSE MKT'').[4]

ByRDs Generally

ByRDs are European-style option contracts on individual stocks, exchange-traded funds (''ETFs'') and Index-Linked Securities that have a fixed return in cash based on a set strike price; satisfy specified listing criteria; and may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation (the ''OCC'').[5] ByRDs are binary options and, as such,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR–Amex–2004–27) (Order approving listing of Fixed Return Options (''FROs'')); *see also* Securities Exchange Act Release No. 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR–NYSEMKT–2014–06) (Order approving name change from FROs to Binary Return Derivatives (ByRDs) and re-launch of these products, with certain modification, and amending Obvious Errors rules to include ByRDs).

[5] *See* proposed Rules 5.82(b)(1).

differ from traditional options traded on U.S. options exchanges by providing a discontinuous or non-linear payout. An in-the-money ByRD will pay a fixed sum at expiration regardless of the magnitude of the difference between the option's exercise price and the settlement price. The Exchange proposes to list ''Finish High'' ByRDs, which will return $100 per contract if the settlement price of the underlying security is above the strike price at expiration, and ''Finish Low'' ByRDs, which will return $100 per contract if the settlement price of the underlying security is below the strike price at expiration.[6]

The Exchange proposes to specify which series of ByRDs options contracts may open for trading and the permissible strike price intervals.[7] After a particular class of ByRDs has been approved for listing on the Exchange (as described below), except for consecutive week expiration series, at the commencement of trading for a particular class of ByRDs, the Exchange shall open a minimum of one expiration month for each class of ByRDs open for trading on the Exchange.[8] The Exchange also proposes that consecutive week expiration series expire at the end of the week, normally a Friday, with consecutive week expirations covering the next five calendar weeks.[9] New expiration week series will be added for trading on Thursday each week, unless Thursday or Friday is an Exchange holiday, in which case new expiration series would be added for trading on Wednesday.[10] Further, the Exchange proposes that the strike price interval for ByRDs contracts will be $1 for strike prices between $3 and $200, and $5 for strike prices over $200.[11] The Exchange proposes to initially list series that are no more than 30% away from the price of the underlying security, and may list additional series if the furthest out of the money strike is less than 10% out of the money.[12] At such time, the Exchange could list additional series that are not more than 30% away from the price of the underlying security.[13] At the time the Exchange is adding additional series, it may proactively delist any existing series without open interest.[14]

Listing Standards

The initial listing criteria for ByRDs require that an individual stock underlying a ByRDs contract meet the criteria for underlying securities in Rule 5.3, ''Criteria for Underlying Securities,'' and, in addition, have: (1) Minimum market capitalization of at least $40 billion; (2) minimum trading volume, in all markets in which the security trades, of at least one billion shares in the preceding 12 months; (3) minimum average daily trading volume of four million shares; (4) minimum average daily trading value of at least $200 million during the previous six months; and (5) a minimum market price per share of at least $10, as measured by the closing price reported in the primary listed market in which the security is traded, over the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the OCC for listing and trading.[15] An ETF or Index-Linked Security underlying a ByRDs contract would have to meet these five additional criteria along with the requirements of Rule 5.3, except for the minimum market capitalization requirement.[16]

The continued listing criteria for ByRDs require that an individual stock underlying a ByRDs contract satisfy the requirements of Rule 5.4, ''Withdrawal of Approval of Underlying Securities,'' and, in addition, have: (1) Minimum market capitalization of at least $30 billion; (2) minimum trading volume, in all markets trading the security, of at least one billion shares in the preceding 12 months; (3) minimum average daily trading volume of four million shares; (4) minimum average daily trading value of at least $125 million during the last six months; and (5) an underlying market price per share of at least $5 at the time additional series are listed for trading.[17] An ETF or Index-Linked Security underlying a ByRDs contract would have to meet these five additional criteria along with the requirements of Rule 5.4, except for the minimum market capitalization requirement.[18]

Volume Weighted Average Price Settlement

To reduce concerns regarding potential price manipulation at expiration due to the ''all-or-nothing'' return provided by a ByRDs contract, the Exchange proposes to settle ByRDs using an all-day volume weighted average price (''VWAP'') based on trading in the underlying security on the last trading day prior to expiration.[19] To calculate the VWAP, the Exchange will use composite prices during regular trading hours as reported by industry price vendors.[20] If the security underlying a ByRDs contract does not trade or is unavailable during regular trading hours at expiration, the settlement price may be fixed pursuant to the OCC's rules on a basis that the OCC believes is appropriate under the circumstances, including using the last sale price during regular trading hours on the most recent trading day for which a last sale price is available.[21] The Exchange will publish and disseminate the current value of the VWAP calculation for ByRDs at least every 15 seconds throughout the last trading day prior to expiration. The Exchange will disseminate the VWAP settlement price as the official settlement price for ByRDs and will make it publicly available through various market data vendors and on the Exchange Web site.

The Exchange also proposes to provide that the settlement price will be calculated such that it will always round up $.01 in those instances when the settlement price exactly equals an expiring strike price.[22] For example, if the calculated settlement price is $20.00, and there are expiring ByRDs Finish High and Finish Low contracts with a strike price of $20.00, the

[6] *See* proposed Rule 5.82(b)(2) and (3).

[7] *See* proposed Rule 5.83.

[8] *See* proposed Rule 5.85(a).

[9] *See* proposed Rule 5.85(b).

[10] *See id.* The Exchange believes that including instances when an Exchange holiday falls on a Thursday would allow the Exchange to add new series during Thanksgiving week or anytime Christmas or New Year's falls on a Thursday, which increased flexibility would benefit market participants.

[11] *See* proposed Rule 5.85(c).

[12] *See* proposed Rule 5.85(c)(1).

[13] *See id.*

[14] *See* proposed Rule 5.85(c)(2).

[15] *See* proposed Rule 5.90, Commentary .01.

[16] *See* proposed Rule 5.90, Commentary .02.

[17] *See* proposed Rule 5.91, Commentary .01. For purposes of this Rule, the market price of an underlying security is (i) for intra-day series additions, the last reported trade in the primary listed market in which the underlying security trades at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary listed market in which the underlying security traded on the last trading day before the series are added. *See* proposed Rule 5.91, Commentary .02.

[18] *See* proposed Rule 5.91, Commentary .03.

[19] *See* proposed Rule 5.89. The VWAP for an underlying security is the sum of the dollar value of reported trades (price multiplied by the number of shares traded), divided by the total number of shares traded during the entire last day of trading prior to expiration. *See* Rule 5.82(b)(4)–(5).

[20] *See* proposed Rule 5.89(a). Composite prices are prices reported to the consolidated tape from any participating exchange or market. The Exchange notes that the OCC currently uses composite pricing in connection with the settlement of expiring equity options. The composite closing price is the last reported sale price from any eligible trade source (*i.e.,* primary listing market or participating regional market). It is not an average price. *See* Securities Exchange Act Release No. 49045 (January 8, 2004), 69 FR 2377 (January 15, 2004) (notice of filing and immediate effectiveness of File No. SR–OCC–2003– 01).

[21] *See* proposed Rule 5.89, Commentary .01.

[22] *See* proposed Rule 5.89, Commentary .02.

settlement price will be rounded up to $20.01 so that the Finish High options will pay off. The effect of rounding will be to have long $20.00 strike Finish High holders receiving $100.00 and long $20.00 strike Finish Low holders receiving $0. Absent this rounding, a participant may potentially have a position that appears to guarantee a pay-off of $100 at expiration, but would instead receive $0. For example, if an investor holds both a $20.00 strike Finish High contract and a $20.00 strike Finish Low contract, the investor would receive $0 if the settlement price was calculated to exactly equal the $20.00 strike price. Although the risk of the settlement price equaling the strike price is small, the Exchange believes that this could cause problems both for hedging and explaining to investors what would happen in the unusual circumstance where the settlement price matched the strike price of an expiring ByRDs contract exactly. The Exchange believes this proposed rounding method will ensure that either the Finish High or the Finish Low ByRDs option contracts will always pay off at expiration. The Exchange believes this will result in less opportunity for investor confusion and less uncertainty for participants as a whole.

Position and Exercise Limits of ByRDs

The position limits for ByRDs will be 25,000 contracts on the same side of the market, and positions in ByRDs will not be aggregated with positions in other options on the same underlying security for purposes of determining compliance with the position limits.[23] The Exchange is not proposing exercise limits for ByRDs because ByRDs will be exercised automatically at expiration if the settlement price of the underlying security is greater than the strike price of a Finish High ByRDs or less than the strike price of a Finish Low ByRDs.[24] ByRDs will not be subject to any qualified hedge exemptions from position limits. Positions in ByRDs must be reported to the Exchange when an account establishes an aggregate position on the same side of the market of 200 or more contracts,[25] and the provisions of Rule 6.6, ''Reporting of Options Positions,'' will apply to ByRDs.[26] Rule 6.6(b) requires that a member, other than an Exchange Market Maker, that maintains a position in excess of 10,000 Non-FLEX equity options contracts on the same side of the market, for its own account or the account of its customer, report certain information to the Exchange, including whether the position is hedged, a description of the hedge, and, if applicable, a description of the collateral. The Exchange believes that the reporting requirements under Rule 5.87 and the surveillance procedures for hedged positions will enable the Exchange to closely monitor sizable ByRDs positions and corresponding hedges.[27] The Exchange notes that Rule 6.11 regarding Other Restrictions on Exchange Option Transactions and Exercises, shall be applicable to ByRDs.[28]

Margins

A customer account with a long position in a ByRDs contract must initially deposit and maintain margin equal to at least 100% of the purchase price of the ByRD.[29] A customer account with a short position in a ByRD contract must initially deposit and maintain margin equal to the exercise settlement amount.[30] No margin is required for a ByRD position carried short against an existing long position in the same ByRD,[31] or when the writer's obligation is secured by a specific deposit or escrow deposit meeting the entire obligation under the ByRD.[32] In addition when a Finish High ByRDs option is carried short in a customer's account and there is also carried a short Finish Low ByRDs option for the same underlying security or instrument that expires at the same time and has an exercise price that is less than or equal to the exercise price of the short Finish High, the initial and maintenance margin required is the exercise settlement amount applicable to one contract.[33]

Bid-Ask Differentials and Minimum Price Variations

A Market Maker is expected to quote with no more than $0.25 between the bid and the offer for each ByRD contract, except during the last trading day prior to expiration, when the maximum width may be $0.50.[34] The Exchange may, however, establish permissible price differences other than those noted above for one or more series or classes of ByRDs as warranted by market conditions.[35]

Rule 6.72, ''Trading Differentials,'' generally provides that MPV for an option is: (i) $0.05 for options quoted under $3 a contract; and (ii) $0.10 for options quoted at $3 a contract or greater.[36] For the options classes included in the Penny Quoting Pilot Program, the MPV is: (i) $0.01 for options quoted under $3 a contract; and (ii) $0.05 for options quoted at $3 a contract or greater.[37] The Exchange proposes that the minimum price variation (''MPV'') for quoting and trading of ByRDs contracts will be $0.01 for all series.[38]

Obvious Errors and Catastrophic Errors

Related to the adoption of ByRDs, the Exchange also proposes to revise Rule 6.87, Nullification and Adjustment of Options Transactions including Obvious Errors, to include a new subsection (c)(6) that addresses the handling of transactions in ByRDs option contracts that are subject to the Obvious Error provisions of Rule 6.87. Proposed Rule 6.87(c)(6) provides that any transaction in a ByRDs contract that is higher or lower than the Theoretical Price by $0.25 or more shall be deemed an obvious error, subject to the adjustment procedures of Rule 6.87(c)(4), unless such adjustment would result in a price higher than $1.02, in which case the adjustment price shall be $1.02.[39] As ByRDs will either pay $0 or $100 at expiration, a single ByRDs contract should not have a value greater than $1.00, therefore the Exchange believes that any adjustment under the provisions of the Obvious Error rule should be capped at a price no higher than $1.02. The Exchange also proposes to amend Rule 6.87(d)(3) to add a reference to proposed paragraph (d)(3)(A). The Exchange also proposes to amend Rule 6.87(d) to state that transactions in ByRDs contracts over $1.02 shall qualify as catastrophic errors if participants request a review under the existing provisions of paragraph (d)(2).[40] Transactions in ByRDs contracts that qualify as catastrophic errors will be adjusted in accordance with the procedures of proposed paragraph (d)(3)(A), which states that

[23] *See* proposed Rule 5.86(a) and (b).

[24] *See* proposed Rule 5.94.

[25] *See* proposed Rule 5.87.

[26] *See* proposed Rule 5.87. In computing reportable ByRDs positions under Rule 6.6, ByRDs on underlying securities shall not be aggregated with non-ByRDs option contracts. *See id.*

[27] The Exchange notes that hedge information for member firm and customer accounts with 200 or more contracts are reported electronically via the Large Options Position Report. In addition, the Exchange notes that Market Maker account information is reported to the Exchange by the member's clearing firm.

[28] *See* proposed Rule 5.88.

[29] *See* proposed Rule 4.16(d)(10)(A)(i).

[30] *See* proposed Rule 4.16(d)(10)(A)(ii).

[31] *See* proposed Rule 4.16(d)(10)(A)(iii).

[32] *See* proposed Rule 4.16(d)(10)(B).

[33] *See* proposed Rule 4.16(d)(10)(A)(iv).

[34] *See* proposed Rule 5.93.

[35] *See* proposed Rule 5.93, Commentary .01.

[36] See Rule 6.72(a)(1)–(2).

[37] *See* Rule 6.72(a)(3). In addition, options on the Power Shares QQQ Trust trade at an MPV of $0.01 for all options premiums. *See id.*

[38] *See* proposed Rule 5.92.

[39] *See* proposed Rule 6.87(c)(6).

[40] *See* proposed Rule 6.87(d)(3)(A).

any transaction in ByRDs that is higher or lower than the Theoretical Price by $.50 or more shall be deemed a Catastrophic Error, subject to the adjustment procedures of paragraph (d)(3) unless such adjustment would result in a price higher than $1.02, in which case the adjustment price shall be $1.02.[41] Thus, as proposed, the transaction would only be adjusted to $1.02 if the adjustment would result in a price greater than $1.02. As ByRDs will either pay $0 or $100 at expiration, a single ByRDs contract should not have a value greater than $1.00, therefore the Exchange believes that any adjustment under the provisions of the Catastrophic Error rule should be capped at a price no higher than $1.02. Capping the adjustment price at $1.02 for Catastrophic Errors involving ByRDs options is consistent with the adjustment process for obvious errors involving ByRDs option, which are also capped at $1.02.[42] The proposed change would ensure that ByRDs trades that are deemed Catastrophic Errors are appropriately adjusted.[43]

Trading Halts and Suspensions of Binary Return Derivatives

The Exchange also proposes to adopt Rule 5.95 to make clear that the Exchange would halt or suspend trading for a ByRDs contract to the same extent that it halts or suspends trading under Rule 6.65 in an option contract on the same underlying security. In other words, trading in ByRDs contracts would be treated the same as other options contracts in the event that trading in options contracts is halted or suspended on the same underlying security.

Implementation

The Exchange proposes to announce the implementation of the proposed rule change via Trader Update.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[44] in general, and furthers the objectives of Section 6(b)(5) of the Act[45] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, this proposal is designed to mirror the approved ByRDs rules that are in place on NYSE MKT, a competing options exchange.[46] The Exchange believes that introducing ByRDs would provide investors with a potentially useful investment choice that is already available on NYSE MKT, which aids in perfecting the mechanism of a free and open market and a national market system. In addition, and consistent with the Commission's findings when approving for listing ByRDs on NYSE MKT, listing ByRDs on Arca, ''will extend to certain binary options the benefits of a listed exchange market, which include: A centralized forum for price discovery; pre- and post-trade transparency; standardized contract specifications; and the guarantee of the OCC.''[47]

The Exchange believes that the proposed changes to the obvious and catastrophic error rule (*i.e.,* Rule 6.87) are consistent with the Act as they would protect investors and the public interest by providing certainty about how obvious and catastrophic errors in ByRDs would be treated. Specifically, the new provisions in the obvious and catastrophic error rule describe how to determine whether transactions in ByRDs contracts should be treated as errors and, if so, how they should be adjusted and the maximum adjustment price for such errors. The new provisions still require that the transactions be erroneous, as provided in Rule 6.87, and set forth specific criteria and procedures for the handling of such errors. The Exchange believes the specific and objective criteria to determine how and when to adjust transactions involving obvious or catastrophic errors provides certainty to market participants and reduces potential confusion, which serves to protect investors and the public interest.

The Exchange also believes that the proposed rule to make clear that ByRDs would be treated the same as other options contracts, in the event of a trading halt or suspension, would remove impediments to, and perfect the mechanisms of, a free and open market because it would add clarity and transparency to Exchange rules. Moreover, this proposed change would ensure consistent treatment of ByRDs contracts in the event of a halt or suspension of trading in options contracts on the same underlying security.

Finally, the Exchange has in place an adequate surveillance program to monitor trading in ByRDs and intends to largely apply its existing surveillance program for options to the trading of ByRDs. The Exchange also has the necessary systems capacity to support the new options series that would result from the introduction of ByRDs. In addition, (ii) the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle additional traffic associated with the listing and trading of ByRDs. The OCC has represented that it is able to accommodate the clearing and settlement of ByRDs contracts. Finally, the Exchange will monitor any increased trading volume associated with the listing of new series of ByRDs and will analyze the effect, if any, that the additional volume has on the capacity of the Exchange's, OPRA's, and the OCC's automated systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[48] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will enhance competition by introducing a potentially useful investment choice, which is already available on competing options exchanges.[49]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[41] *See* proposed Rule 6.87(d)(3)(A).

[42] *See* Rule 6.87 (c)(6).

[43] The Exchange notes that ByRDs contracts were outside of the scope of the industry wide effort to harmonize Obvious and Catastrophic Error rules, and the proposed change therefore does not impact the harmonization effort. *See* Securities Exchange Act Release No. 74920 (May 8, 2015), 80 FR 27816, 27822 (May 14, 2015) (SR–NYSEMKT–2015–39).

[44] 15 U.S.C. 78f(b).

[45] 15 U.S.C. 78f(b)(5).

[46] *See supra* n. 4.

[47] *See supra* n. 4, 72 FR at 46524 (Order approving listing of Fixed Return Options, later renamed ByRDs).

[48] 15 U.S.C. 78f(b)(8).

[49] *See supra* n. 4.

19(b)(3)(A) of the Act[50] and Rule 19b–4(f)(6) thereunder.[51]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–16, and should be submitted on or before March 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02439 Filed 2–8–16; 8:45 am]

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[50] 15 U.S.C. 78s(b)(3)(A).

[51] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 11, 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.

Chair White, 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; 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: February 4, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–02600 Filed 2–5–16; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77047; File Nos. SR–NYSE–2015–31 and SR–NYSEMKT–2015–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Withdrawal of Proposed Rule Changes Amending the NYSE Trades Market Data and NYSE MKT Trades Market Data Product Offerings

February 3, 2016.

On July 16, 2015, New York Stock Exchange LLC (''NYSE'') and, on July 24, 2015, NYSE MKT LLC (''NYSE MKT'') (together with NYSE, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] proposed rule changes to amend, respectively, the NYSE Trades market data and NYSE MKT Trades market data product offerings. The proposed rule changes were published for comment in the **Federal Register** on August 5, 2015.[3] Six comments on the proposals were received.[4] On September 17, 2015, the Commission issued an order instituting proceedings to determine whether to disapprove the proposed rule changes.[5] On November 16, 2015, the Exchanges withdrew the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4

[3] *See* Securities Exchange Act Release Nos. 75556 (July 30, 2015), 80 FR 46628 (SR–NYSE–2015–31) and 75559 (July 30, 2015), 80 FR 46642 (SR–NYSEMKT–2015–56).

[4] Letter from Eric S. Hunsader, Nanex, LLC, dated August 14, 2015; Letter from John Ramsay, Chief Market Policy Officer, IEX Group, Inc., to Brent J. Fields, Secretary, Commission, dated August 20, 2015; Letter from Lorenzo Ferlazzo, Acquaequity to the Commission, dated October 1, 2015; Elliot Grossman, Managing Director, Dinosaur Securities, LLC, to Brent J. Fields, Secretary, Commission, dated October 13, 2015; Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission, dated October 14, 2015; Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 12, 2015.

[5] *See* Securities Exchange Act Release No. 75937, 80 FR 57408 (Sept. 23, 2015).

proposals (SR–NYSE–2015–31 and SR–NYSEMKT–2015–56).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02441 Filed 2–8–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77043; File No. SR–DTC–2016–002]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Discontinuance of the Facsimile and Hardcopy Delivery Methods of Security Position Reports

February 3, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2016, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) 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 by DTC would discontinue the options for Users (as defined below) to receive facsimile or hardcopy delivery of Security Position Reports (''SPRs''), as more fully described below.[5] Users could continue to access SPRs using the other currently available methods that DTC makes available for all Users, namely either directly through the secure DTC Web site dedicated to SPR processing (''SPR Site'')[6] or by using DTC's Computer-to-Computer Facility (''CCF'').[7] Consistent with the elimination of the facsimile and hardcopy methods described above, DTC would eliminate the provision in the DTC SPR Pricing Schedule (''Pricing Schedule'')[8] relating to a special charge for facsimile delivery of SPRs by DTC and make technical changes to text in the DTC Operational Arrangements (''OA''),[9] as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

Background

DTC may provide to Issuers, Trustees, and third party Agents authorized by the Issuer (collectively, ''Users''), listings of Participants' holdings of Issuer Securities on a specific date for specific Securities, by CUSIP number. These listings are known as SPRs or Security Position Listings.[10] DTC charges fees for providing SPRs, as set forth in the Pricing Schedule.

All Users must be registered for the SPR Site and all requests for subscriptions or individual copies of SPRs must be made through the SPR Site. A User may request that the delivery of an SPR be made directly through the SPR Site in either Browser or Spreadsheet formats, by CCF,[11] or by facsimile. Hardcopy delivery is also available for certain Users upon request.[12] For reports covered by SPR subscriptions, Users do not pay an additional delivery fee regardless of delivery method. However, for reports not covered by SPR subscriptions, *i.e.,* special requests and meeting record date requests, Users must pay an additional $25.00 charge for facsimile and spreadsheet delivery.

DTC is proposing to eliminate the facsimile and hardcopy methods of SPR delivery for a number of reasons. First, doing so would improve efficiencies in terms of streamlining SPR processing away from more manually intensive delivery methods and thus lower costs to DTC. Second, eliminating physical delivery methods in favor of access to SPRs through electronic interface or transmission methods provides a higher level of security.[13] Third, the elimination of these two delivery methods should not have a significant impact on Users because delivery of SPRs through facsimile and hardcopy delivery represents less than one percent of SPRs delivered. Fourth, there is no additional delivery-related charge to a User for access to SPRs via Browser or CCF, thus making those delivery options less costly for non-subscription Users that currently pay an additional charge of $25.00 for facsimile delivery per report.[14]

Although Users that have SPR subscriptions would no longer have the option to receive SPRs by facsimile or hardcopy, the cost savings to DTC of eliminating these delivery methods is ultimately cost savings to the Users. The elimination of the facsimile and hardcopy methods would balance the costs to DTC and obviate the need for DTC to raise its SPR subscription fees.

Proposed Revisions to the Pricing Schedule and OA

In connection with this proposal to no longer offer facsimile and hard copy [sic] delivery methods, DTC would update its Pricing Schedule to remove the $25.00 additional charge per report when facsimile service is specifically

[6] 17 CFR 200.30–3(a)(12).

[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)(6).

[5] Terms not otherwise defined herein have the meaning set forth in the DTC Rules, By-laws and Organization Certificate (''DTC Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] Users choosing to access an SPR directly through the SPR Site could select to view the SPR in either a web browser format (''Browser'') or in a downloadable spreadsheet format (''Spreadsheet'').

[7] CCF is a transmission system for input and output based on various protocols between the mainframe computer facility of a user of DTC's services and DTC's mainframe computer facility.

[8] *Available at http://www.dtcc.com/asset-services/issuer-services/spr-pricing.*

[9] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[10] Users need access to SPRs to identify Participants holding securities in order to conduct functions they perform relating to security holders, including but not limited to proxy and record date functions.

[11] CCF delivery of SPRs may be requested by Users who have set up a link to interface with DTC through CCF. DTC does not charge Users for the establishment or maintenance of links to CCF.

[12] Hardcopy delivery is utilized by a small number of Users on a ''grandfathered'' basis and is not currently available as an option for new Users. Upon implementation of the proposed rule change these grandfathered Users would be required to migrate to another available delivery method.

[13] As mentioned above, all Users have the ability to obtain SPRs directly through the SPR Site.

[14] *See* the Pricing Schedule, *supra* note 8.

requested for special requests and record date meeting requests.[15]

The OA would also be amended in the section relating to SPRs to:

(i) update references to the link to the DTC public Web page that provides information on SPR service options, pricing, and guidance on use of the SPR service,[16] and

(ii) remove text stating that SPRs may reflect Participant holdings in Securities of Trustees or third party Agents because an SPR reflects Participant holdings in the Security of an Issuer.

Implementation

The effective date of the proposed rule change would be February 4, 2016.

2. Statutory Basis

Section 17A(b)(3)(F)[17] of the Act requires that the rules of the clearing agency be designed, *inter alia,* in general, to protect investors and the public interest. DTC believes the proposed rule change is consistent with this provision because (i) no longer offering facsimile and hardcopy delivery would promote efficiency and enhance security with respect to the delivery of SPRs to Users that are needed by Users to identify Participants holding Securities on the books of DTC and perform security holder-related functions, and (ii) the technical changes to the OA text described above would facilitate enhanced transparency for Users with respect to their use of the SPR service. Thus, by (i) facilitating efficient and secure delivery of SPR reports, and (ii) providing for enhanced transparency in the OA text relating to use of the SPR Service in this regard, the proposed rule change would protect investors and the public interest.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact or impose any burden on competition because it would not have a material effect on User access to SPRs. All Users would continue to be required to register for the SPR Site in order to gain access to SPRs, as described above, and each User would have the same ability as other Users to obtain SPRs that it is authorized to access.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited and does not intend to solicit comments regarding the proposed rule change. DTC has not received any unsolicited written comments from interested parties. To the extent DTC receives written comments on the proposed rule change, DTC will forward such comments to the Commission. DTC has discussed the proposed discontinuance of facsimile and hardcopy delivery of SPRs with Users that have used those methods of delivery to receive SPRs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[18] of the Act and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

DTC has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to DTC, the proposed rule change does not present any novel or controversial issues. Rather, DTC is merely enhancing its process for delivery of SPRs to Users to facilitate efficiency and security in DTC's processing of SPR requests in a way that would not have a material effect on User access to SPRs. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow DTC to facilitate efficiency and security in processing SPRs. Therefore, the Commission designates the proposed rule change to be operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–DTC–2016–002 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–DTC–2016–002. 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 DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the

[15] This proposed rule change does not change the additional $25.00 charge that applies to Spreadsheet delivery of special requests and record date meeting requests for SPRs.

[16] *Available at http://www.dtcc.com/spr.*

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] *Id.*

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–DTC–2016–002 and should be submitted on or before March 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02438 Filed 2–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77042; File No. SR–OCC–2015–018]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving the Adoption of a Charter of a New Committee of The Options Clearing Corporation's Board of Directors, the Technology Committee

February 3, 2016.

On December 8, 2015, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2015–018 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On December 24, 2015, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

I. Description

OCC is adopting a Charter for a new committee of OCC's Board of Directors (''Board''), the Technology Committee (''TC''). Additionally, OCC is adding a description of the TC into Article III, Section 9 of OCC's By-Laws. The Board formed the TC in order to enhance the Board's understanding and oversight of key technology, information security, and cyber-security risk issues at OCC. Consistent with OCC's other Board-level committee charters, the TC Charter sets forth: (i) The purpose, functions, and responsibilities of the TC; and (ii) the composition and organization of the TC.

As set forth in the TC Charter, the TC will be responsible for: (i) Overseeing major information technology (''IT'') related strategies, projects, and technology architecture decisions; (ii) monitoring whether OCC's IT programs effectively support OCC's business objectives and strategies; (iii) monitoring OCC's IT risk management efforts as well as the security of OCC's information systems and physical security of information system assets; and (iv) conferring with OCC's senior IT management team and informing the Board on IT-related matters.

Further, and with respect to the TC Charter's role in the oversight of OCC's IT strategy and projects, the TC Charter provides that the TC will be specifically tasked with: (i) Evaluating OCC's IT strategy, including the financial, tactical, and strategic benefits of IT projects and technology architecture initiatives; (ii) critically reviewing IT projects and technology architecture decisions, including review of the process related to approval of capital expenditures as they relate to IT projects; and (iii) making recommendations to the Board with respect to IT-related projects and investments that require Board approval. In addition, the TC Charter will require that the TC: (i) Monitor the quality and effectiveness of OCC's IT and physical security, including periodically reviewing and appraising OCC's disaster recovery capabilities and crisis management plans; (ii) in coordination and cooperation with the Audit Committee of the Board, monitor the quality and effectiveness of OCC's IT systems and processes that relate to or affect OCC's internal controls and assess OCC's management of IT-related compliance risks; (iii) report to the Board and the Audit Committee about IT risks and controls; and (iv) serve in an advisory role with respect to IT decisions at OCC. In connection with carrying out its responsibilities, the TC will also, in general, inform and make recommendations to the Board and other Board-level committees with respect to IT-related matters.

The TC Charter will provide that the TC be comprised of three or more directors, and meet at least four times per year.[4] The TC will function in a manner similar to the other Board-level committees in that it will have the ability to hire specialists and meet in executive session as well as be required to report to the Board on an annual basis. The TC will also have to annually confirm to the Board that its responsibilities, as set forth in the TC Charter, have been carried out and evaluate its and its members' performance on a regular basis.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the rule change, as proposed, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act. This section requires, among other things, that the rules of a clearing agency promote the prompt and accurate clearance and settlement of securities transactions.[6] The rule change should enhance the effectiveness of the Board's oversight on OCC's business and operational processes. Specifically, it should enhance technology-related processes (such as disaster recovery and crisis management plans), as well as IT systems that relate to internal controls and compliance risks, through a dedicated Board-level committee's oversight of such processes. Accordingly, the proposed rule change will increase the likelihood that OCC's technology processes work as expected, including those processes tied to the clearance and settlement of securities transactions.

Additionally, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(8). This rule requires a clearing agency's the written policies and procedures to: (i) Have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act; (ii) support the objectives of OCC's owners and participants; and (iii) promote the effectiveness of OCC's risk management procedures.[7] First, the TC Charter delineates a clear and transparent governance arrangement designed to increase the likelihood that OCC's technology processes work as expected (including those processes tied to the clearance and settlement of securities transactions). By increasing the likelihood that OCC's technology processes work as expected, the TC Charter also supports the objective of OCC's owners and participants to promote the prompt and accurate clearance and settlement of securities

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 76686 (December 18, 2015), 80 FR 80422 (December 24, 2015) (SR–OCC–2015–018).

[4] Members of the TC will not need to be technology experts.

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(d)(8).

transactions. Finally, the TC Charter promotes the effectiveness of OCC's risk management procedures by establishing a Board-level committee focused on reducing IT-related risk at OCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–OCC–2015–018) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02437 Filed 2–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77045; File No. SR–NYSEArca–2015–113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating to the Index Underlying the WisdomTree Put Write Strategy Fund

February 3, 2016.

I. Introduction

On December 2, 2015, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to change a representation the Exchange made in support of a prior proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 21, 2015.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. The Exchange's Description of the Proposed Rule Change

A. The Prior Proposal

The Commission approved the listing and trading on the Exchange of shares (''Shares'') of the WisdomTree Put Write Strategy Fund (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units.[4] The Exchange filed that proposed rule change because the Fund and the Shares did not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), applicable to the listing of Investment Company Units based upon an index of ''US Component Stocks.'' [5] The Exchange represented that the Shares would conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the underlying index, the CBOE S&P 500 Put Write Index (the ''Index''), would not meet the requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(1)–(5). The Exchange, however, also represented that the Index would (1) include a minimum of *20 components,* and therefore (2) meet the numerical *requirements* of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(4), which requires a minimum of 13 index or portfolio components.

The Exchange has not listed or commenced trading in the Shares.[6]

B. The Instant Proposed Rule Change

The Exchange submitted this proposal to correct two representations made in support of its prior proposal to list and trade the Shares. Specifically, the Exchange seeks to strike its representations that the Index will (1) include a minimum of 20 components; and (2) meet the numerical requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(4). At any given time, the Index consists of one component, an ''SPX Put.'' [7] Additionally, NYSE Arca clarifies that the Commentary is inapplicable because the Index contains options components.[8]

The Exchange asserts that the deletion of its prior representations would not adversely affect investors or the public interest, because the Index is based on CBOE-traded puts on the S&P 500, which are highly liquid.[9] The Exchange further estimates that, on the launch date, the Fund would hold approximately $2.5–$5.0 million in cash and cash equivalents. The Exchange also believes that sufficient protections are in place to protect against market manipulation of the Fund's Shares and SPX Puts because: (i) Trading in the Shares and the underlying Fund instruments are subject to the federal securities laws and to the Exchange's, CBOE's, and the Financial Industry Regulatory Authority's rules and surveillance programs, which are designed to detect violations; (ii) assets in the portfolio—which will primarily be short-term U.S. Treasury bills [10] and SPX Puts—will be acquired in extremely liquid and highly regulated markets; and (iii) the exchange-traded fund creation/redemption and arbitrage mechanisms are tied to the large pool of liquidity of each of the Fund's underlying investments.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws. Furthermore, the Financial Industry

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76646 (Dec. 15, 2015), 80 FR 79371 (''Notice'').

[4] *See* Securities Exchange Act Release Nos. 74290 (February 18, 2015), 80 FR 9818 (February 24, 2015) (SR–NYSEArca–2015–05) (''Prior Notice''); 74675 (April 8, 2015), 80 FR 20038 (April 14, 2015) (SR–NYSEArca–2015–05) (''Prior Order'' and, together with the Prior Notice, the ''Prior Release'').

[5] NYSE Arca Equities Rule 5.2(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act and an American Depositary Receipt, the underlying equity securities of which is registered under Sections 12(b) or 12(g) of the Act.

[6] *See* Notice, *supra* note 3, 80 FR at 79371.

[7] The Index is maintained by the Chicago Board Options Exchange, Inc. (''CBOE'') and tracks the value of a passive investment strategy, which consists of overlaying of S&P 500 Index put options (''SPX Puts'') over a money market account, invested in one and three-month Treasury bills. The SPX Puts are struck at-the-money and are sold on a monthly basis, usually the third Friday of the month (*i.e.,* the ''Roll Date''), which matches the expiration date of the SPX Puts. All SPX Puts are standardized options traded on the CBOE.

[8] NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(5) provides that all securities in the applicable index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the S&P 500 Index is a US Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock.

[9] *See* Notice, *supra* note 3, at 79372 and 79373 for the Exchange's representation of the average daily trading volume of at-the-money 30-day SPX Puts, the trading volume of the at-the-money SPX Puts, and the daily high, low and last reported sales prices on each of the Roll Dates for SPX Puts at-the-money.

[10] *See* Notice, *supra* note 3, at 79373. The Exchange states that the short-term Treasury securities that the Fund will acquire as part of its strategy are not readily susceptible to market manipulation due to the liquidity and extensive oversight associated with the short-term U.S. Treasury market.

Regulatory Authority (''FINRA''), on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares and SPX Index options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, may obtain trading information regarding trading in the portfolio securities from these markets and other entities. In addition, the regulatory staff of the Exchange may obtain information regarding trading in the portfolio securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the exchange's proposal is consistent with the requirements of Section 6 of the Act [11] and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that it would be difficult to manipulate the price of the Shares by manipulating the prices of its underlying assets. The Fund's portfolio will comprise cash, short-term U.S. Treasury bills, and SPX Puts.[14] The Exchange contends that neither short-term Treasury securities nor SPX Puts are readily susceptible to market manipulation due to the deep liquidity in[15] and extensive oversight of those markets.[16] With respect to SPX Puts, specifically, the Exchange has provided data demonstrating that the average daily trading volume (through expiration) of recent SPX Puts compares favorably to the average daily trading volumes of at-the-money put options on other major indexes and is, in fact, higher than that of at-the-money puts on the Russell 2000 index.[17]

For these reasons, the Commission believes that it would be difficult to manipulate the price of the Shares by manipulating the prices of its underlying assets. The Commission also notes that, except as discussed above, all other representations made in support of the Prior Release remain unchanged.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2015–113), be, and it hereby is,approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02440 Filed 2–8–16; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f.

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Notice, *supra* note 3, 80 FR at 79373.

[15] The Exchange states: ''According to Federal Reserve Bank of New York data as of September 2015, average daily trading volume for U.S. Treasury bills totaled $67.8 billion. . . . SPX options are among the most liquid index options in the U.S. and derive their value from the actively traded S&P 500 Index components. SPX options are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes that the highly regulated S&P 500 options markets, and the broad base and scope of the S&P 500 Index, make securities that derive their value from that index, including S&P 500 options, less susceptible to potential market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.'' *Id.*

[16] The Exchange states: ''In addition, the Treasury market and its participants are subject to a wide range of oversight and regulations, including requirements designed to prevent market manipulation and other abuses. For example, Treasury market participants and the Treasury market, itself, are subject to significant oversight by a number of regulatory authorities, including the Treasury, the Commission, federal bank regulators, and the Financial Industry Regulatory Authority.'' *Id.,* n.15. The Exchange represents that the SPX Puts will be subject to CBOE and FINRA surveillance programs. *See id.,* 80 FR at 79374.

[17] *See id.,* 80 FR at 79372–73.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77041; File No. SR–OCC–2016–001]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Options Clearing Corporation's Schedule of Fees

February 3, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 20, 2016, The Options Clearing Corporation (''OCC'') 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 OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) [3] of the Act 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 rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change by The Options Clearing Corporation (''OCC'') is to revise OCC's Schedule of Fees effective March 1, 2016, to implement a reduction of clearing fees in accordance with OCC's Fee Policy, which was recently adopted as part of OCC's Capital Plan.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In 2015, the Commission approved (''Approval Order'') OCC's plan for raising additional capital (''Capital Plan''), which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. *See* Securities Exchange Act Release No. 74452 (March 6, 2015) 80 FR 13058 (March 12, 2015) (SR–OCC–2015–02). OCC also filed proposals in the Capital Plan Filing as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). On February 26, 2015, the Commission issued a notice of no objection to the advance notice filing. *See* Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12215 (March 6, 2015) (SR–OCC–2014–813). BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP (collectively ''Petitioners'') each filed petitions for review of the Approval Order, challenging the action taken by delegated authority. The filing of the petitions automatically stayed the Approval Order. OCC filed a Motion to Lift the Stay on April 2, 2015, and the

Continued

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise OCC's Schedule of Fees in accordance with its new Fee Policy. The revised fee schedule would become effective on March 1, 2016.

By way of background, in 2015, the Commission approved OCC's Capital Plan,[6] which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. As part of OCC's Capital Plan, OCC adopted a Fee Policy whereby OCC would set clearing fees at a level that covers OCC's operating expenses plus a Business Risk Buffer[7] of 25%.[8] The purpose of the Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements.

OCC analyzed its current Schedule of Fees[9] against projected revenues and projected expenses for 2016 in accordance with its Fee Policy. The primary goal of this analysis was to determine a fee setting approach for 2016 that covers OCC's anticipated operating expenses, seeks to minimize the number of fee resets under normal market conditions, and seeks to achieve a Business Risk Buffer of 25%. To project revenue (which is a product of cleared contract volume and clearing fees per contract), OCC estimated cleared contract volume per month for 2016 by computing the average of the previous 12 months of actual cleared contract volume data, excluding the high and low volume months, and used such average as the anticipated cleared contract volume per month for 2016.[10] For expenses, OCC used projected 2016 expenses, computed at the end of 2015 as part of OCC's 2016 budgeting process. OCC arrived at the fee schedule presented herein by determining the figures that would result in a coverage OCC's anticipated operating expenses plus a Business Risk Buffer of 25%.

As a result of the aforementioned analysis, OCC proposes to revise its Schedule of Fees as set forth below.[11]

Trades with contracts of:	Current fee	Proposed fee
1–500	$0.050/contract	$0.041/contract.
501–1000	$0.040/contract	$0.032/contract.
1001–2000	$0.030/contract	$0.024/contract.
>2000	$55.00/trade	$46.00/trade.

OCC anticipates that the proposed changes to OCC's Schedule of Fees would result in an average decrease in clearing fees of 19%. Moreover, and in accordance with its Fee Policy, OCC will continue to monitor cleared contract volume and operating expenses in order to determine if further revisions to OCC's Schedule of Fees are required so that monies received from clearing fees cover OCC's operating expenses plus a Business Risk Buffer of 25%.[12]

2. Statutory Basis

OCC believes that the proposed rule change concerning a reduction to OCC's clearing fees is consistent with Section 17A(b)(3)(D)[13] of the Act, because the proposed fee schedule provides for the equitable allocation of reasonable fees among its clearing members and other market participants pursuant to criteria set forth in OCC's Capital Plan, which has been approved by the Commission.[14] The revised fee schedule would result in lower clearing fees for OCC's clearing members and other market participants and would be equally applicable to all market participants. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would have an impact or impose a burden on competition.[15] Although this proposed rule change affects clearing members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed clearing fees apply equally to all users of OCC. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

Petitioners responded. The Commission subsequently determined that the automatic stay of delegated action should be discontinued, and the Commission granted OCC's Motion to Lift Stay of the staff's action in approving by delegated authority File No. SR–OCC–2015–02.

[6] *See supra* note 5.

[7] The Business Risk Buffer is equal to net income before refunds, dividends, and taxes divided by total revenue.

[8] OCC's Schedule of Fees must also meet the requirements set forth in Article IX, Section 9 of OCC's By-Laws. In general, Article IX, Section 9 of OCC's By-Laws requires that OCC's fee structure be designed to: (1) Cover OCC's operating expenses plus a business risk buffer, (2) maintain reserves deemed reasonably necessary by OCC's Board of Directors, and (3) accumulate an additional surplus deemed advisable by the Board of Directors to permit OCC to meet its obligations to its clearing members and the public. Clauses 2 and 3 above will only be invoked at the discretion of OCC's Board of Directors and in extraordinary circumstances.

[9] OCC previously revised its Schedule of Fees effective April 1, 2014, to reinstate permanent reduced fee rates for securities options and securities futures that were originally adopted effective May 1, 2007. *See* Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR–OCC–2014–05).

[10] In order to validate this approach, OCC back tested its volume projecting methodology against data from the previous five years and determined that such methodology yields reasonable estimate of future contract volume.

[11] These changes are also reflected in Exhibit 5. Market maker/specialist scratch and linkage fees per side will remain unchanged at $0.020.

[12] Any subsequent changes to OCC's Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

[13] 17 U.S.C. 78q–1(b)(3)(D).

[14] *See supra* note 5.

[15] 15 U.S.C. 78q–1(b)(3)(I).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing [16] pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and Rule 19b–4(f)(2) thereunder [18] because it constitutes a change in fees imposed by OCC on its clearing members and other market participants using OCC's services. 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–OCC–2016–001 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–OCC–2016–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_001.pdf.* 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–OCC–2016–001 and should be submitted on or before March 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–02443 Filed 2–8–16; 8:45 am]

BILLING CODE 8011–01–P

[16] Notwithstanding the immediate effectiveness of the proposed rule change and OCC's anticipated implementation date of March 1, 2016, implementation of this rule change is also contingent on it being deemed certified under CFTC Regulation § 40.6.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14589 and #14590]

Mississippi Disaster Number MS–00083

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4248–DR), dated 01/04/2016.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 12/23/2015 through 12/28/2015.

Effective Date: 01/22/2016.

Physical Loan Application Deadline Date: 03/04/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 10/04/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 01/04/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Clay, Itawamba, Monroe, Prentiss, Tallahatchie.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–02483 Filed 2–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14609]

California Disaster #CA–00243 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 02/02/2016.

Incident: Ocean Conditions Resulting in the Delayed Commercial Dungeness Crab Season and Closure of Commercial Rock Crab Fishery.

Incident Period: 11/06/2015 and continuing.

Effective Date: 02/02/2016.

EIDL Loan Application Deadline Date: 11/02/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alameda, Butte, Contra Costa, Del Norte, El Dorado, Humboldt, Lake, Marin, Mendocino,

Nevada, San Francisco, San Luis Obispo, San Mateo, Santa Cruz, Sonoma.

Contiguous Counties:

California: Alpine, Amador, Colusa, Glenn, Kern, Kings, Monterey, Napa, Placer, Plumas, Sacramento, San Benito, San Joaquin, Santa Barbara, Santa Clara, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Trinity, Yolo, Yuba.

Nevada: Douglas, Washoe.

Oregon: Curry, Josephine.

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for economic injury is 146090.

The States which received an EIDL Declaration # are California, Nevada, Oregon.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 2, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–02577 Filed 2–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14581 and # 14582]

Texas Disaster Number TX–00462

AGENCY: U.S. Small Business Administration

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4245–DR), dated 12/24/2015.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 10/22/2015 through 10/31/2015.

Effective Date: 01/29/2016.

Physical Loan Application Deadline Date: 02/22/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 09/26/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 12/24/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Smith.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–02562 Filed 2–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14610 and #14611]

Idaho Disaster #ID–00061

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Idaho (FEMA–4252–DR), dated 02/01/2016.

Incident: Severe Winter Storms.

Incident Period: 12/16/2015 through 12/27/2015.

EFFECTIVE DATE: 02/01/2016.

Physical Loan Application Deadline Date: 04/01/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 11/01/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/01/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Benewah, Bonner, Kootenai.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14610B and for economic injury is 14611B.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–02546 Filed 2–8–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before March 10, 2016

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: In October 2014, a new cohort of sites was added to the Regional Innovation Clusters (RIC) initiative, which was originally started in October 1, 2010 by the Small Business Administration (SBA)'s Office of Entrepreneurial Development. Through this initiative, organizations in 11 communities across the U.S. have been selected to provide industry-specific assistance to small businesses, and to develop industry relationships and supply chains within their regions. Clusters—geographically concentrated groups of interconnected businesses, suppliers, service providers, and associated institutions in a particular industry or field—act as a networking hub to convene a number of resources to help navigate the funding, procurement, and supply-chain opportunities in a specific industry.

SBA is conducting an evaluation of the Regional Innovation Clusters initiative to determine how the clusters have developed, the type and volume of services they provided to small businesses, client perceptions of the program, and the various outcomes related to their existence, including collaboration among firms, innovation, and small business growth. Small business growth will be compared to the overall growth of firms in those same regions and industries. This evaluation will also include lessons learned and success stories. SBA proposes the use of three instruments for data collection and analysis of three distinct populations. These instruments are: (1). Small Business Survey, (2.) Large Organization Survey and (3.) Cluster Administrator Survey. In addition, SBA plans to interview each of the 11 cluster administrators several times a year regarding program impact and successes or challenges, and to obtain clarifications on information provided in quarterly reports. Each of the proposed surveys will be administered electronically and will contain both open- and close-ended questions. The information collected and analyzed from these instruments will contribute to monitoring performance metrics and program goals, as well as recommendations on improving program practices.

Solicitation of Public Comments:

Title: Regional Innovation Clusters (RIC) Initiative Evaluation Study.

Description of Respondents: Interconnected businesses, Suppliers, Service providers, and associated institutions.

Form Number: N/A.

Estimated Annual Responses: 1,240.

Estimated Annual Hour Burden: 388.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–02484 Filed 2–8–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9438]

Overseas Security Advisory Council (OSAC) Meeting Notice

Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 23 and 24, 2016. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: February 2, 2016.

Bill A. Miller,

Director of the Diplomatic Security Service, U.S. Department of State.

[FR Doc. 2016–02583 Filed 2–8–16; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 9436]

30-Day Notice of Proposed Information Collection: Courier Drop-Off List for U.S. Passport Applications

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to March 10, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison, 44132 Mercure Cir, P.O. Box 1227, Sterling, Virginia 20166–1227, who may be reached on (202) 485–6538 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Courier Drop-Off List for U.S. Passport Applications.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L).
- *Form Number:* DS–4283.
- *Respondents:* Business or Other For-Profit.
- *Estimated Number of Respondents:* 1,000 respondents per year.
- *Estimated Number of Responses:* 216,000 responses per year.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 36,000 hours per year.
- *Frequency:* Daily.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the

validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The information collected on the DS–4283 is used to facilitate the issuance of passports to U.S. nationals with imminent travel plans who hire private courier companies to deliver their applications to one of the Department's domestic passport agencies. The Department asks courier company employees to complete the DS–4283 and submit the form with passport applications delivered in bulk to passport agencies in a designated drop-off box. Passport agencies use the form to track the submission of applications that a courier drops off. The form serves as a record of receipt of documents submitted to the Department and as an acknowledgment of who delivered these documents. The DS–4283 is part of a Department effort to facilitate the delivery of passport applications by private courier companies while maintaining the integrity of the passport application process.

Methodology: This form is used to track the processing of passport applications delivered in bulk to passport agencies by private courier companies. Courier employees are asked to attach the form onto sealed envelopes or packages containing passport applications which they deliver in bulk to designated drop-off facilities at one of twelve passport agencies for processing.

Dated: February 3, 2016.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–02579 Filed 2–8–16; 8:45 am]

BILLING CODE 4710–06–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

Meeting No. 16–01

The TVA Board of Directors will hold a public meeting on February 11, 2016, in the Missionary Ridge Auditorium of the Chattanooga Office Complex, 1101 Market Street, Chattanooga, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (ET). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (ET). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

Agenda

Chair's Welcome

Old Business

Approval of minutes of the November 20, 2015, Board Meeting

New Business

1. Report from President and CEO
2. Governance Items
   A. Committee Charters
   B. Board Practice on Confidential Information
3. Report of the Audit, Risk, and Regulation Committee
   A. Regulation of Pole Attachment Fees
4. Report of the Finance, Rates, and Portfolio Committee
5. Report of the Nuclear Oversight Committee
6. Report of the External Relations Committee
7. Report of the People and Performance Committee
   A. Chair Selection
8. Information Items
   A. Kingston Insurance Arbitration Settlement
   B. Watts Bar Unit 2 Capital Project Budget Increase
   C. Vehicular Accident Litigation Settlement

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 4, 2016.

Sherry A. Quirk,

General Counsel.

[FR Doc. 2016–02646 Filed 2–5–16; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting; RTCA Special Committee (229) Aircraft Emergency Locator Transmitters (ELTs) (Joint With EUROCAE WG–98)

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

ACTION: Notice of Seventh RTCA Special Committee 229 Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Seventh RTCA Special Committee 229 meeting.

DATES: The meeting will be held March 16–18, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036, Tel: (202) 330–0662.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Jennifer Iversen, Program Director, RTCA, Inc., *jiversen@rtca.org,* (202) 330–0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 229. The agenda will include the following:

Wednesday, March 16, 2016 (9:00 a.m.–5 p.m.)

1. Welcome/Introductions/ Administrative Remarks
2. Agenda overview and approval
3. Minutes Paris meeting review/ approval
4. Review Action Items from Paris meeting
5. ''Phasing in'' RTCA/DO–204B, EUROCAE/ED–62B –Timeline and TOR
6. Briefing of ICAO and COSPAS-SARSAT activities
7. Other Industry coordination and presentations
8. WG 1 to 5 status and week's plan
9. WG meetings (rest of the day)

Thursday, March 17, 2016 (9:00 a.m.–5 p.m.)

1. WG 2 to 5 meetings

Friday, March 18, 2016 (9:00 a.m.–3 p.m.)

1. WG 2–5 meetings (if needed)
2. WGs' reports
3. Action item review
4. Future meeting plans and dates

5. Industry coordination and presentations (if any)
6. Other business
7. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 4, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–02551 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Monroe Regional Airport at Monroe, Louisiana.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Monroe Regional Airport at Monroe, Louisiana under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before (from 30 days of the posting of this **Federal Register** Notice).

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey Spriggs, Manager, Federal Aviation Administration, Louisiana/New Mexico Airports District Office, ASW–640, 10101 Hillwood Parkway, Fort Worth, Texas 76177.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ron Phillips, Airport Manager, at the following address: Monroe Regional Airport, 5400 Operations Drive, Room 200, Monroe, Louisiana 71203.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Bell, Lead Engineer, Federal Aviation Administration, Louisiana/New Mexico Airports District Office, ASW–640, 10101 Hillwood Parkway, Fort Worth, Texas 76177, telephone: (817) 222–5664, email: *Bill.Belll@faa.gov*, fax: (817) 222–5987.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Monroe Regional Airport at Monroe, Louisiana under the provisions of the AIR 21.

The following is a brief overview of the request:

The City of Monroe requests the release of 1.105 acres of aeronautical airport property. The property is located in the Airport Industrial Park area. The property to be released will be sold and revenues shall be used to fund the Bermuda Release Program and purchase a tractor for the operation and maintenance at the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Monroe Regional Airport at Monroe, Louisiana, telephone number (318) 329–2460.

Issued in Fort Worth, Texas on December 7, 2015.

Ignacio Flores,

Manager, Airports Division.

[FR Doc. 2016–02563 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–11]

Petition for Exemption; Summary of Petition Received; Bowhead Mission Solutions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 29, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–0916 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 28, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0916.

Petitioner: Bowhead Mission Solutions.

Section(s) of 14 CFR Affected: 91.119.

Description of Relief Sought:— Petitioner seeks to operate an unmanned aerial system (UAS) to conduct aerial photography for the University of Nevada—Las Vegas athletic department for activities at the Sam Boyd Stadium.

[FR Doc. 2016–02566 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–16]

Petition for Exemption; Summary of Petition Received; Sky-Futures USA, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 29, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–0641 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 28, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0641.

Petitioner: Sky-Futures USA, Inc.

Section(s) of 14 CFR Affected: 45.27 (a), 61.113(a) and (b), 91.7(a), 91.105, 91.119(c), 91.121, 91.151(b), 91.405(a), 91.407(a)(1), 91.409(a)(1) and (a)(2), and 91.417(a) and (b).

Description of Relief Sought: The petitioner is requesting relief to launch its small unmanned aircraft systems (sUAS) from a moving vessel such as a boat for the commercial purpose of aerial data collection of motor vessels and sailing vessels over open waters.

[FR Doc. 2016–02565 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixty-Seventh Meeting: RTCA Special Committee (135) Environmental Conditions and Test Procedures for Airborne Equipment

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

ACTION: Notice of Sixty-Seventh RTCA Special Committee 135 Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Sixty-Seventh RTCA Special Committee 135 meeting.

DATES: The meeting will be held March 29–31, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at Honeywell, PRN A Conference Rooms, 21111 N. 19th Avenue, Phoenix, AZ, 85027, Tel: (202) 330–0680.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Karan Hofmann, Program Director, RTCA, Inc., *khofmann@rtca.org,* (202) 330–0680.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 135. The agenda will include the following:

Monday, March 29, 2016

1. AM Session: Ground Reference Fluctuations
2. PM Session: RF Susceptibility

Tuesday, March 30, 2016

1. AM Session: EMI; Vibration & Shock
2. PM Session: Power Inputs, Explosive, Waterproofness, Fluids, Salt Fog

Wednesday, March 31, 2016

1. Chairmen's Opening Remarks, Introductions
2. Approval of Summary from the Sixty-Sixth Meeting—(RTCA Paper No. 014–16/SC135–705)
3. Review Working Group Activities
4. Review Terms of Reference
5. Review DO–160G Errata Sheet
6. New/Unfinished Business
7. Establish date/locations for Next SC–135 Meetings
8. Closing and Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 4, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–02561 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twelfth Meeting; RTCA Tactical Operations Committee (TOC)

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

ACTION: Notice of Twelfth RTCA Tactical Operations Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Twelfth RTCA Tactical Operations Committee meeting.

DATES: The meeting will be held March 3, 2016 from 9:00 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0655.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Trin Mitra, TOC Secretary, RTCA, Inc., *tmitra@rtca.org,* (202) 330–0655.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Tactical Operations Committee. The agenda will include the following:

Thursday, March 3, 2016

1. Opening of Meeting/Introduction of TOC Members—Co Chairs Dale Wright and Bryan Quigley
2. Official Statement of Designated Federal Official—Elizabeth Ray
3. Approval of November 12, 2015 Meeting Summary
4. FAA Update—Elizabeth Ray
5. FAA Response to Previous TOC Recommendations: Caribbean Operations and Class B Airspace
6. Recommendations from the Airport Construction Task Group.
7. Recommendations from the National Procedure Assessment Task Group
8. Introduction to new PBN Route Structure Task
9. Discussion on potential task on Graphical TFRs
10. Update on the NextGen Advisory Committee (NAC)
11. FAA briefing on One Engine Inoperative (OEI) procedures
12. Anticipated Issues for TOC consideration and action at the next meeting
13. Other Business
14. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 4, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–02550 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0481]

Motor Carriers of Passengers That Serve Primarily Urban Areas With High Passenger Loads

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of information and request for comments.

SUMMARY: This request for comments is related to the implementation of a specific provision in section 32707 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) that requires an annual safety fitness assessment of certain motor carriers of passengers that serve primarily urban areas with high passenger loads. FMCSA requests comments about an appropriate definition of a ''curbside bus operator'' that will be subject to this annual safety fitness assessment and will be consistent with Congressional intent.

DATES: You must submit comments by April 11, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2015–0481 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Follow the on-line 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., Washington, DC, between 9 a.m. and 5 p.m., ET, 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 document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: All comments received were posted without change to *http://www.regulations.gov*. In accordance with 5 U.S.C. 553(c), DOT previously solicited comments from the public to better inform its rulemaking process. DOT posted 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: Ms. Loretta Bitner, (202) 385–2428, *loretta.bitner@dot.gov*. FMCSA office hours are from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

Motorcoach safety received increased public attention after several serious crashes during 2011, some of which involved ''curbside'' bus operators, passenger carrier operations often characterized by high passenger loads with service between urban areas. As a result, the National Transportation Safety Board (NTSB) conducted an investigation of motorcoach safety with an emphasis on curbside operations. One objective of the investigation was to describe the characteristics of the curbside business model among interstate motorcoach carriers. The NTSB examined a population of 4,172 active interstate motorcoach carriers operating in the United States and identified 71 of them as scheduled motorcoach carriers providing curbside service.

In its ''Executive Report on Curbside Motorcoach Safety'' that was published on October 12, 2011, the NTSB stated

the following in describing curbside bus operators:

> The term ''curbside operations'' refers to a business model (that is, the means by which motorcoach service is provided) rather than a type of motorcoach carrier. In fact, no formal definition of curbside carriers exists, and federal and state oversight authorities have no unique categorization or tracking mechanism for these carriers. For the purpose of this report, curbside motorcoach operations are those in which interstate motorcoach carriers conduct scheduled trips from one city to another city or a destination and originate or terminate at a location other than a traditional bus terminal; most of these operations discharge passengers at one or more curbside locations.
>
> Although curbside motorcoach carriers apply a similar business model, they vary greatly in other characteristics. Some carriers operate large fleets of motorcoaches throughout the United States, whereas others have a fleet of only a few buses that operate in local regions.

MAP–21 was signed into law on July 6, 2012. Section 32707, codified at 49 U.S.C. 31144(i)(4)(B), addresses improved oversight of motorcoach service providers. A ''motorcoach'' is defined in section 32707(b) of MAP–21 as an ''over-the-road bus;'' one with an elevated passenger deck over a baggage compartment. A motorcoach does not include a bus used in public transportation provided by a State or local government, or a school bus. The statute requires an annual assessment of the safety fitness of certain motor carriers of passengers that serve primarily urban areas with high passenger loads.

Implementation of Statutory Provision

Section 31144(i)(4) requires that the Secretary:

- Reassess the safety fitness rating of each motor carrier of passengers at no less than once every 3 years; and
- Annually assess the safety fitness of certain motor carriers of passengers that serve primarily urban areas with high passenger loads.

The language indicates Congress' intent to have two levels of oversight for motor carrier of passengers, a safety fitness rating every 3 years for each passenger carrier and, a safety fitness assessment annually for passenger carriers that serve primarily urban areas with high passenger loads. To effectively implement 49 U.S.C. 31144(i)(4)(B), FMCSA must define which passenger carriers will be subject to the annual safety fitness assessment requirement. While Congress directed that carriers of passengers that serve primarily urban areas with high passenger loads be subject to this requirement, FMCSA does not collect urban area service or passenger volume information from motor carriers of passengers that are subject to the Agency's safety oversight.

FMCSA believes Congress intends for the Agency to have increased safety oversight of the bus operators that generally provide low-cost, regularly scheduled passenger transportation service between major cities with curbside boarding and/or disembarking. Although some carriers purport to have a bus terminal/facility/station, the location used for passengers is a waiting area only outside of an office building and the passenger pickups and drop-offs occur at the curbside or in a parking lot.

Request for Comments

Because FMCSA does not include in its regulations or regulatory guidance a definition of the term ''curbside bus operator,'' the Agency believes it is imperative that one be adopted in order to effectively implement 49 U.S.C. 31144(i)(4)(B). Therefore, the Agency proposes the following definition for identifying motor carriers of passengers that must undergo an annual assessment:

> ''Curbside Bus Operator'' means a motor carrier of passengers that serves primarily urban areas with high passenger loads, and uses 25% or more of its motorcoaches for operations with passenger pickups and drop-offs occuring at the curbside or in a parking lot.

FMCSA would use this definition in identifying, tracking, and conducting the annual safety fitness assessments of every identified curbside bus operators. This definition would not have any impact on the enforcement of the applicable safety regulations. It would only be used to identify those carriers that Congress intends the Agency conduct annual safety assessments.

FMCSA is considering the use of the following questions during the motor carrier registration process to identify curbside bus operators that transport high passenger loads:

> Does your company operate 25% or more of its motorcoaches between cities providing for-hire passenger transportation that originates or terminates at locations other than terminals, such as street corners or outside a retail business?
>
> Is your company required to obtain a permit from a local government to pick up or drop off at locations other than terminals, such as street corners or outside a retail business?

The operation of a motorcoach to transport passengers is the FMCSA's interpretation of a high passenger load with implementation of 49 U.S.C. 31144(i)(4)(B). Motorcoaches are large capacity passenger vehicles that are frequently operated by curbside bus operators.

FMCSA requests public comments whether the proposed definition and questions are appropriate for idenitying curbside operators for implementation of the statutorily mandated annual safety fitness assessments.

In addition to motor carriers of passengers that identify themselves as curbside bus operators through the motor carrier registration process, FMCSA will direct its enforcement personnel to designate passenger carriers as a curbside bus operators in the Agency's database when there is evidence that the carriers are conducting curbside bus operations, but fail to report it to the Agency or began curbside bus operations subsequent to registration. With this in mind, FMCSA is seeking input to the following questions.

1. Should FMCSA identify all motor carriers of passengers that have both curbside operations and operations that originate/terminate at a traditional bus terminal as curbside bus operators requiring an annual safety assessment?

2. Should a motor carrier of passengers that uses 25% or more of its motorcoaches for curbside operations be identified by FMCSA as a curbside bus operator requiring an annual safety assessment?

3. Should FMCSA base the percentage of curbside operations on the number of motorcoaches used in that type of service? If not, then what measure should be used?

4. Should FMCSA include passenger carrier operations that pick up passengers at the curbside in vehicles smaller than motorcoaches with the intent of transferring the passengers to a larger passenger vehicle such as a motorcoach as curbside bus operators requiring an annual safety assessment?

5. Should a motor carrier of passengers applicant be required to self-identify as a curbside operator during registration with FMCSA?

6. Should a motor carrier of passengers previously registered with FMCSA be required to self-identify as a curbside operator when updating its registration information as required by 49 CFR 390.201?

7. Should FMCSA base the definition of an urban area on population, incorporated land area, defined commercial zones, urbanized area as defined by the U. S. Census Bureau, or some other criteria?

8. Should a motor carrier of passengers with 25% or more of its motorcoach operation taking place in primarily urban areas be identified by

FMCSA as a curbside bus operator requiring an annual safety assessment?

9. Is there any additional criteria we should consider to identify which motor carrier of passenger should be defined as a curbside bus operator requiring an annual safety assessment?

Issued under the authority delegated in 49 CFR 1.87 on: January 29, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–02510 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0238]

Parts and Accessories Necessary for Safe Operation; TowMate, LLC Application for an Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant TowMate, LLC's (TowMate) application for a limited two-year exemption to allow motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. Under the Federal Motor Carrier Safety Regulations (FMCSRs), all required lamps, with the exception of battery-powered lamps used on projecting loads, must be powered by the electrical system of the motor vehicle. The Agency has determined that use of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations would not have an adverse impact on safety, and use of these systems under the terms and conditions of the exemption would achieve a level of safety equivalent to or greater than the level of safety provided by the regulation. This decision is consistent with an August 2005 amendment to the FMCSRs to allow battery powered lamps on the rear of projecting loads.

DATES: This exemption is effective February 9, 2016 and ending February 9, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, 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 online Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

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)).

TowMate's Application for Exemption

TowMate applied for an exemption from 49 CFR 393.23 to allow motor carriers to operate rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.23, ''Power Supply for Lamps,'' provides that ''All required lamps must be powered by the electrical system of the motor vehicle with the exception of battery powered lamps used on projecting loads.''

The application stated:

TowMate is making this request because the use of conventional hard wired temporary stop, turn, and tail lights has many drawbacks that wireless tow lights solve. These include broken connections, frayed wires, burnt out incandescent bulbs, and the potential to be snagged or pulled from the tow light receptacle due to improper running of wires, and road hazards, along with the safety hazard of increasing the amount of time spent on the roadside or the scene of an accident by stringing wired lighting systems between vehicles and securing the wires. With the advent of LED technology coupled with advancements in battery technologies, wireless tow lights are more reliable and better equipped for the rigors of daily temporary use.

Temporary wireless stop, turn, tail lighting systems can operate for 10+ hours of continuous use on a full charge, and in-cab wire-less monitoring systems give the driver constant information on the functioning of the system, displaying state of charge of the battery inside the unit, displaying the functioning of the system during operation, and warning the driver if the unit is no longer functioning. In this sense, wireless tow lights provide a level of safety and redundancy that is not currently required on wired temporary lighting systems. In an emergency situation with a drained battery, power can be directly connected to the temporary wireless stop, turn, and tail lighting system from a standard 4 pin or 7 pin electrical connection.

Without the proposed temporary exemption, tow and haul away operators will be forced to continue to use cumbersome wired temporary towing light systems, placing an unnecessary burden on their daily operations. The current temporary lighting requirements for stop, tail, and turn lamps require that the lamps receive their power from a direct wired connection to the towing vehicle with no ascertainable benefit from doing such. Wireless tow lights afford benefits that wired systems are unable to, such as redundancies like monitoring the status of the unit in real time, thus assuring their proper operation at all times.

Comments

On August 6, 2015, FMCSA published notice of the TowMate application and requested public comment (80 FR 47031). The Agency received thirteen comments, all in support of TowMate's application.

The Towing and Recovery Association of America, Inc., and the Wisconsin Towing Association commented that hard-wired temporary stop, tail and turn signal lighting systems take additional time to install on the side of the road or highway as compared to wireless systems, leaving tow operators vulnerable and at greater risk of being struck and injured by passing motorists These commenters stated that use of rechargeable wireless temporary stop, turn, and tail lighting

systems would help eliminate this hazard, and provide a safer working environment.

Seven commenters identified themselves as owners of small towing companies that use rechargeable wireless temporary stop, turn, and tail lighting systems when conducting temporary emergency tows. These commenters echoed the comments above, noting that use of the wireless systems allows operators to clear accident scenes from roadways faster and thereby increases tow operator safety.

Four additional commenters supported TowMate's application, noting the same benefits as the other commenters.

Discussion

Prior to August 2005, section 393.23 of the FMCSRs was titled ''Lighting devices to be electric,'' and stated ''Lighting devices shall be electric, except that red liquid-burning lanterns may be used on the end of loads in the nature of poles, pipes, and ladders projecting to the rear of the motor vehicle.'' In a final rule published on August 15, 2005, FMCSA amended section 393.23 of the FMCSRs to incorporate terminology which is more consistent with current industry standards and practices (70 FR 48008). Specifically, the title of section 393.23 was revised to read ''Power supply for lamps,'' the reference to red liquid-burning lanterns was removed as obsolete, and—as it relates to the subject exemption application—the rule was amended to permit the use of battery powered lamps on projecting loads. With respect to the use of battery powered lamps, the August 2005 rule states ''With the exception of *temporary* lamps used on projecting loads, lamps are required to be powered through the electrical system of the commercial motor vehicle.'' [Emphasis added].

Motor vehicles transporting loads which extend more than 4 feet beyond the rear of the motor vehicle, or which have tailboards or tailgates extending more than 4 feet beyond the body, are required to mark those projections when the vehicle is operated during the hours when headlamps are required. Specifically, each side of the projecting load is required to be marked with one red side marker lamp, visible from the side, located to indicate the maximum overhang, and the rear of the projecting load is required to be marked with two red lamps, visible from the rear, one at each side, and two red reflectors visible from the rear, one at each side, located so as to indicate the maximum width of the projection. By expressly permitting battery powered lamps on projecting loads via the August 2005 final rule, the Agency has directly acknowledged the viability of lighting systems powered by sources other than the vehicle's electrical system in limited applications where the lamps required by the regulations are temporary in nature due to the specific vehicle operation.

Section 393.17 of the FMCSRs prescribes the lighting requirements for vehicles engaged in driveaway-towaway operations. A vehicle combination consisting of a tow vehicle pulling a wrecked or disabled vehicle is considered a driveaway-towaway operation, and the combination needs to be equipped with the lighting devices specified in section 393.17. Specifically with respect to the rear of the rearmost towed vehicle in such a combination, section 393.17(b)(2) requires at least two tail lamps, two stop lamps, two turn signals, two clearance lamps, and two reflectors, one of each type at each side. In addition, if any vehicle in the combination is 80 inches or more in overall width, there must be three identification lamps on the rear. Similar to the temporary lamps required on the rear of projecting loads, the required lamps on the rear of a wrecked or disabled vehicle being transported to a motor carrier's terminal or facility for repairs are temporary in nature.

FMCSA Decision

FMCSA has evaluated the comments received in support of TowMate's application. The Agency agrees that permitting the use of rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations will reduce the time tow operators spend at the side of the road connecting wired lighting systems between vehicles, thereby reducing their risk of injury and increasing safety. The Agency believes that use of the rechargeable wireless lighting systems will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. This decision is consistent with the amendment made in the August 2005 final rule to allow battery powered lamps on the rear of projecting loads.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a two-year period, beginning February 9, 2016 and ending February 9, 2018. During the temporary exemption period, motor carriers will be allowed to use rechargeable wireless temporary stop, turn, and tail lighting systems that do not meet the lighting power supply requirements of 49 CFR 393.23 during temporary towing operations, provided the requirements of 49 CFR 393.17(b)(2) are met. The exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers using rechargeable wireless temporary stop, turn, and tail lighting systems during temporary towing operations are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Issued on: January 29, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–02511 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0134; Notice 2]

General Motors LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: General Motors LLC, (GM) has determined that certain model year 2014

Chevrolet Silverado and GMC Sierra trucks manufactured between January 29, 2013, and October 28, 2013, do not fully comply with paragraph S5.3.1(e) of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays,* and paragraph S3.1.4.1 of FMVSS No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect.* GM filed a report dated October 31, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* GM then petitioned NHTSA in accordance with 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5307, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. GM's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on February 24, 2014, in the **Federal Register** (79 FR 10226). Four individuals and the Advocates for Highway and Auto Safety (Advocates) provided comments to the receipt notice. To view the petition, the comments, and all supporting documents, log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then, follow the online search instructions to locate docket number ''NHTSA–2013–0134.''

II. Vehicles Involved: Affected are approximately 200,921 model year 2014 Chevrolet Silverado and GMC Sierra trucks manufactured between January 29, 2013, and October 28, 2013.

III. Noncompliance: GM explains that the noncompliance is that under certain circumstances when an owner uses the steering wheel controls to browse and select songs to play from an external device (*i.e.,* MP3 player) that is plugged into one of the vehicle's USB ports, the instrument cluster may reset. When the instrument cluster resets the analog gauges and identifications, the PRNDM [shift position] indicator, and the cruise control telltale, if illuminated, will briefly extinguish. In addition, some of the instrument cluster telltales may also illuminate briefly during a bulb check without the condition the telltale is designed to indicate being present.

IV. Rule Text: Paragraph S5.3.1 of FMVSS No. 101 states specifically:

S5.3.1 Timing of illumination

. . .

(e) A telltale must not emit light except when identifying the malfunction or vehicle condition it is designed to indicate, or during a bulb check.

Paragraph S3.1.4. of FMVSS No. 102 states specifically:

S3.1.4 Identification of shift positions and of shift position sequence.

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

(a) The ignition is in a position where the transmission can be shifted; or

(b) The transmission is not in park. . . .

V. Summary of GM's Analyses: GM states that the subject noncompliance is unlikely to occur in that all of the following conditions have to exist: The driver must operate a media device inserted into one of the vehicle's USB ports in a very specific way; the redundant steering wheel controls must be used to select a song; the driver must then search for a particular song by depressing the left arrow on the right spoke of the steering wheel, then select ''audio'' using the steering wheel controls, then select ''browse'' using the steering wheel controls, then scroll to a particular song using the steering wheel control, then select a song to play. If the driver selects ''browse'' using the steering wheel controls to select a second song, the subject condition may occur, but only if the total information in titles of the buffered songs exceeds 2000 bytes.

GM believes that the condition is short-lived as disruption of the PRNDM is said to persist for one and one half seconds, and the telltale bulb check is said to persist for approximately five seconds. GM cited a 1979 interpretation to Ford in which NHTSA acknowledged that a short-lived inability to view telltales does not necessarily warrant manufacturers correcting the condition.[1] NHTSA is quoted as stating, ''This means that the tell-tales and their identification need not be visible to the driver when the tell-tales are struck by direct sunlight. Since conditions such as these are typically short-lived, the NHTSA does not believe that the length of time the driver may be unable to view the tell-tales is significant enough to warrant requiring the manufacturer to prevent their occurrence.''

GM states that the noncompliance that is the subject of the petition has little effect on the normal operation of the vehicle. GM states that when the operation of the instrument panel is briefly affected by the noncompliance, none of the other vehicle operations are affected; any underlying messages remain in place and will continue to be displayed after the instrument panel resets; other operations, like cruise control, are unaffected by the noncompliance (only the displays on the instrument panel are briefly affected by the condition); and if the noncompliance were to occur, it is unlikely the brief disruption of the PRNDM will affect the driver.

Lastly, GM states that NHTSA has previously granted petitions for a determination of inconsequential noncompliance, finding no risk to motor vehicle safety, where the sequence of events causing the noncompliant condition is exceptionally rare. GM states that these granted petitions allow specific telltales to extinguish for a limited period of time while the vehicle is being operated.

In summation, GM believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to be exempt from providing recall notification of the noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA's Decision

NHTSA'S Analysis: NHTSA has reviewed GM's justification for an inconsequential noncompliance determination and agrees that the specific noncompliance addressed is inconsequential to motor vehicle safety.

GM states its belief that the subject condition is unlikely to occur due to the series of events that must take place before the instrument cluster resets. GM explains that the driver must operate a USB media device by using the steering wheel controls to search for a song, select ''audio'', select ''browse'', and select another song to play while the total information in titles of the buffered songs exceeds 2000 bytes for the condition to occur.

GM states that the condition is short-lived with the disruption of the PRNDM illumination lasting approximately one and one half seconds and the telltale

[1] A copy of this letter is attached to GM's petition and is available in the docket at *www.regulations.gov,* Docket No. NHTSA–2013–0134–0001.

bulb check lasting approximately five seconds. According to GM, the condition will have little effect on the normal operation of the vehicle as no underlying systems are affected by the failure.

After receipt of GM's petition, NHTSA requested more information regarding the subject noncompliance. GM submitted videos showing that when the condition occurs any existing warning lights extinguish, the indicators (gauges) drop to zero, and operation of the entire instrument panel is interrupted. Specifically, any illuminated telltales extinguish for approximately one and one half seconds before a bulb check that lasts approximately five seconds is initiated. At the conclusion of the bulb check, any previously illuminated telltales will illuminate and remain illuminated.

NHTSA agrees with GM that if the instrument panel reset were to happen it would only be a momentary condition, the instrument panel telltales and indicators would extinguish and return to normal very quickly, with little, if any, impact to the driver.

GM mentioned two previous petitions that the agency granted due to the loss or failure of telltale indications. In the first petition, *General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance,* 56 FR 33323 (July 19, 1991), the noncompliance would only manifest itself when the headlight high beams were turned on and the cigar lighter was activated. In this situation the required high beam telltale could dim or extinguish altogether for a short period of time while the cigar lighter was being powered. The petition was granted because the agency determined there was no consequence to motor vehicle safety attached to the extinguishment of the high beam telltale.

In the second petition, submitted by Nissan, *Nissan North America, Incorporated, Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 59090, (Sept. 25, 2013), under rare circumstances the transmission gear selected was not always displayed correctly as required. The petition was granted because it was only possible for the gear indication to extinguish when the engine was inactive and the vehicle was inoperable. Upon reactivating the engine the gear indicator displayed the correct gear.

Five commenters (four individuals and the Advocates for Highway and Auto Safety) provided comments about GM's petition when NHTSA issued the notice of receipt in the **Federal Register**.

One individual stated that ''there is no such potential product recall as 'inconsequential' '' and that ''all product recalls must be effectively enforced against the vehicle manufacturer.'' We note that the Motor Vehicle Safety Act requires the Secretary of Transportation to provide the vehicle manufacturers an opportunity to submit information, views, and arguments showing that a noncompliance does not impact motor vehicle safety. NHTSA is then required to consider information and arguments submitted and make a determination whether the noncompliance is, or is not, inconsequential to motor vehicle safety. If NHTSA determines that the subject noncompliance has no consequence to motor vehicle safety, the manufacturer is exempted from notification and remedy requirements of 49 U.S.C. 30118 and 30120.

The second individual commenter believes that GM should conduct a recall because the touch screen is not covered by the vehicle's warranty. The agency feels that this comment is not relevant because the steering wheel controls (rather than the touch screen on the center console) are the controls that must be used for the subject noncompliance to occur.

The two remaining individuals that provided comments believe that anything causing a distraction to the occupants of a motor vehicle under operation should be recalled. One of the commenters expressed that using a USB music device would be distracting and the other believes that the cluster becoming inoperable, even for a second, is enough time to distract the driver and cause an accident.

After reviewing the video provided by GM, the agency believes that a reset of the instrument panel would be corrected quickly within seconds, before the driver would be distracted, or realize what was happening.

The Advocates for Highway and Auto Safety does not specifically support the granting or denial of GM's petition, but believes that the existence of such a malfunction raises serious questions regarding vehicle design which can lead to this kind of situation.

Finally, GM stated that a Service Update Bulletin was issued to update the software of all IP clusters whenever any service to the affected vehicles is done at the dealership. The agency understands that GM's action to update the IP cluster software on these vehicles as they are brought in for regular service should reduce considerably the number of affected vehicles.

NHTSA'S Decision: In consideration of the foregoing, NHTSA has decided that GM has met its burden of persuasion that the FMVSS No. 101 and FMVSS No. 102 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, GM's petition is hereby granted and GM is not obligated to provide notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject noncompliant vehicles that GM no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after GM notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–02415 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0035; Notice 2]

McLaren Automotive, Inc. (McLaren), Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: McLaren has determined that certain model year (MY) 2012–2015 MP4 12–C Spider and Coupe passenger cars do not fully comply with paragraph S4.4(c)(2), of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* McLaren filed a report dated February 18, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* McLaren then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject

noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Kerrin Bressant, Office of Vehicles Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–1110, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, McLaren submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of McLaren's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 1,366 MY 2012–2015 MP4 12–C Spider and Coupe model passenger cars manufactured from October 10, 2011 through February 18, 2014.

III. Noncompliance: McLaren explains that during testing of the tire pressure monitoring system (TPMS) it was noted that the malfunction indicator telltale illuminated as required by FMVSS No. 138 when a malfunction is first detected with the exception of one scenario. If the malfunction is caused by an incompatible wheel sensor, when the vehicle ignition is deactivated and then reactivated to the ''On'' (''Run'') position after a five minute period, there is no immediate re-illumination of the malfunction indicator telltale as required if the malfunction still exists. Although the malfunction indicator telltale does not re-illuminate immediately after the vehicle ignition is reactivated, it does illuminate within 40 seconds after the vehicle accelerates to, or above, 23 miles per hour (mph).

IV. Rule Text: Paragraph S4.4(c)(2) of FMVSS No. 138 requires in pertinent part:

S4.4 TPMS Malfunction.

. . .

(c) *Combination low tire pressure/TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the ''On'' (''Run'') position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the ''On'' (''Run'') position until the situation causing the malfunction has been corrected.

. . .

V. Summary of McLaren's Analyses: McLaren stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) McLaren stated that although the TPMS malfunction indicator telltale will not illuminate immediately after the vehicle is restarted, it generally will illuminate shortly thereafter and in any event it will illuminate in no more than 40 seconds after the vehicle accelerates at or above 23 mph. McLaren submits that this brief pause before the malfunction indicator illuminates is inconsequential to motor vehicle safety.

(B) McLaren explained that if the TPMS fails to detect a signal from a compatible sensor, the TPMS indicator on the instrument cluster will display no value for the tire pressure at the affected wheel(s). A display of no value will therefore also alert the driver to the fact that something is not functioning properly.

(C) McLaren further states that with the exception of the subject noncompliance, all other aspects of the Malfunction Indicator and the TPMS in general are compliant with FMVSS No. 138.

(D) McLaren noted that it is not aware of any customer complaints related to this condition.

(E) McLaren has additionally informed NHTSA that it has corrected this noncompliance in all vehicles manufactured after February 18, 2014.

In summation, McLaren believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt McLaren from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA Decision

NHTSA Analysis: McLaren explained that although the malfunction indicator telltale does not re-illuminate immediately after the vehicle is restarted, it will illuminate shortly thereafter—within 40 seconds after the vehicle speed exceeds 23 mph, and will remain illuminated for the rest of the ignition cycle.

NHTSA agrees with McLaren that the malfunction indicator telltale will not illuminate as required only during very short periods of time when the vehicle is traveling at low speeds and thus poses little risk to motor vehicle safety. Under normal driving conditions, a driver will begin a trip by accelerating moderately beyond 23 mph, and as explained by McLaren, once the vehicle accelerates to or above 23 mph, the malfunction indicator telltale re-illuminates and then remains illuminated for the entire ignition cycle, regardless of vehicle speed. The telltale fails to re-illuminate only in the very rare case when the driver begins a trip and never exceeds 23 mph (the threshold speed necessary to re-activate the malfunction indicator telltale). No real safety risk exists because at such low speeds there is little risk of the driver losing control of the vehicle due to underinflated tires. Furthermore, the possibility that the vehicle will experience both a low inflation pressure condition and a malfunction simultaneously is highly unlikely.

McLaren stated that if the TPMS fails to detect a compatible wheel sensor, the TPMS indicator on the instrument cluster will display no value for the tire pressure at the affected wheel(s). McLaren explained that this information will help to alert the driver that some kind of system malfunction is occurring.

The agency evaluated the displays McLaren uses in the noncompliant vehicles. In addition to the combination telltale indicator lamp, the subject vehicles are equipped with a ''plan view'' icon which displays the pressures for all four wheels individually. If any wheel has a malfunctioning pressure sensor the indicator for that wheel displays several dashes ''---'' indicating the there is a problem with that respective wheel. The additional information is not required by the safety standard, but can be used as an aid to the driver to determine the status of a vehicle's tires.

McLaren discussed that with the exception of the subject noncompliance, all other aspects of the TPMS functionality are compliant with the FMVSS 138 requirements. The primary functions of the TPMS, the identification of all other required malfunctions as well as the identification of low tire inflation pressure scenarios, is not affected.

The agency agrees with McLaren's reasoning with regards to the subject noncompliance involving only one aspect of the system's malfunction functionality. The primary function of the TPMS is to identify low inflation pressure conditions which McLaren's system appears to do as required by FMVSS No. 138. Also, there are a

variety of other malfunctions that can occur in addition to the incompatible tire malfunction identified in this petition. We understand from McLaren that its TPMS will perform as required during all other system malfunctions.

McLaren also mentioned that they have not received or are aware of any consumer complaints, field communications, incidences or injuries related to this noncompliance. In addition to the analysis done by McLaren that looked at customer complaints, field communications, incidents or injuries related to this condition, the agency conducted additional checks of its Office of Defects Investigations consumer complaint database and found no related complaints.

McLaren stated that they have corrected the noncompliance in all unsold vehicles manufactured after February 18, 2014, as required by NHTSA.

NHTSA'S Decision: In consideration of the foregoing, NHTSA finds that Mclaren has met its burden of persuasion that the subject FMVSS No. 138 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, McLaren's petition is hereby granted and McLaren is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject noncompliant vehicles that McLaren no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after McLaren notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–02414 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2015–0194]

30-Day Notice of Application for New Information Collection Request

AGENCY: Office of the Secretary (OST), Department of Transportation (Department) or (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Department of Transportation's (DOT) Office of the Secretary (OST) announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Department of Transportation (DOT) seeks to obtain OMB approval of a generic clearance to collect feedback on our service delivery. A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on November 12, 2015 (80 FR 70077–8). The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: Comments on this notice must be received by March 10, 2016.

ADDRESSES: Your comments should be identified by Docket No. DOT–OST–2015–0194 and may be submitted through one of the following methods:

- *Office of Management and Budget, Attention: Desk Officer for U.S. Department of Transportation, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503*
- *email: oira_submission@omb.eop.gov.*
- *Fax: (202) 395–5806. Attention: DOT/OST Desk Officer.*

FOR FURTHER INFORMATION CONTACT: Habib Azarsina, Office of the Chief Information Officer, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, 20590, 202–366–1965 (Voice), 202–366–7870 (Fax), or *habib.azarsina@dot.gov* (Email).

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Department's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Department of Transportation and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population.

The Department will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary.
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained.

Information gathered is intended to be used only internally for general service improvement and program management

purposes and is not intended for release outside of the Department (if released, the Department must indicate the qualitative nature of the information).

This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 6,000.

Estimated Annual Responses: 2,000.

Estimated Annual Burden Hours: 2,000 hours.

Frequency: One-time requirement.

Issued in Washington, DC on January 27, 2016.

Claire W. Barrett,

Chief Privacy & Information Asset Officer.

[FR Doc. 2016–02491 Filed 2–8–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to the Sergei Magnitsky Rule of Law Accountability Act of 2012

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of five individuals whose property and interests in property are blocked pursuant to the Sergei Magnitsky Rule of Law Accountability Act of 2012 (Pub. L. 112–208, December 14, 2012) (the ''Magnitsky Act'').

DATES: OFAC's actions described in this notice were effective on February 1, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Policy, tel.: 202–622–2746, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On February 1, 2016, OFAC blocked the property and interests in property of the following five individuals pursuant to the Magnitsky Act:

1. KIBIS, Boris Borisovich; DOB 20 Nov 1977; nationality Russia (individual) [MAGNIT].
2. URZHUMTSEV, Oleg Vyacheslavovich; DOB 22 Oct 1968; citizen Russia (individual) [MAGNIT].
3. LAPSHOV, Pavel Vladimirovich; DOB 07 Jul 1976; nationality Russia (individual) [MAGNIT].
4. ANTONOV, Yevgeni Yuvenalievich; DOB 1955; nationality Russia (individual) [MAGNIT].
5. ANICHIN, Aleksey Vasilyevich (a.k.a. ANICHIN, Alexei Vasilievich); DOB 01 Dec 1949; POB Sevastopol, Ukraine (individual) [MAGNIT].

Aleksey Vasilyevich Anichin participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.

Yevgeni Yuvenalievich Antonov is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against an individual seeking to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections, in Russia.

Boris Borisovich Kibis participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.

Pavel Vladimirovich Lapshov participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.

Oleg Vyacheslavovich Urzhumtsev participated in efforts to conceal the legal liability for the detention, abuse, or death of Sergei Magnitsky.

Dated: February 3, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–02436 Filed 2–8–16; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Approval and Disapproval of California Air Plan; San Joaquin Valley Serious Area Plan and Attainment Date Extension for the 1997 $PM_{2.5}$ NAAQS; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and Part 81

[EPA–R09–OAR–2015–0432; FRL–9942–00–Region 9]

Approval and Disapproval of California Air Plan; San Joaquin Valley Serious Area Plan and Attainment Date Extension for the 1997 $PM_{2.5}$ NAAQS

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, conditionally approve, and disapprove state implementation plan (SIP) revisions submitted by California to address Clean Air Act (CAA or Act) requirements for the 1997 24-hour and annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) in the San Joaquin Valley (SJV) Serious $PM_{2.5}$ nonattainment area. As part of this action, the EPA is proposing to grant extensions of the Serious area attainment dates for the 1997 24-hour and annual $PM_{2.5}$ NAAQS in the SJV to December 31, 2018 and December 31, 2020, respectively, based on a conclusion that the State has satisfied the statutory criteria for these extensions of the Serious area attainment date. The EPA is also proposing to approve inter-pollutant trading ratios for use in transportation conformity analyses.

DATES: Any comments must arrive by March 10, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2015–0432 at *http://www.regulations.gov,* or via email to *mays.rory@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), EPA Region 9, (415) 972–3227, *mays.rory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

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I. Background

On July 18, 1997, the EPA established new national ambient air quality standards (NAAQS) for particles less than or equal to 2.5 micrometers (μm) in diameter ($PM_{2.5}$), including an annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (daily) standard of 65 $\mu g/m^3$ based on a 3-year average of 98th percentile 24-hour $PM_{2.5}$ concentrations.[1] The EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above these levels.

Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[2]

$PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (primary $PM_{2.5}$ or direct $PM_{2.5}$) or can be formed in the atmosphere as a result of various chemical reactions from precursor emissions of nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (secondary $PM_{2.5}$).[3]

Following promulgation of a new or revised NAAQS, the EPA is required under Clean Air Act (CAA) section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On January 5, 2005, the EPA published initial air quality designations for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, using air quality monitoring data for the three-year periods of 2001–2003 and 2002–2004.[4] These designations became effective April 5, 2005.[5] The EPA designated the

[1] 62 FR 36852 (July 18, 1997) and 40 CFR 50.7. Effective December 18, 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by lowering the level to 35 $\mu g/m^3$. 71 FR 61144 (October 17, 2006) and 40 CFR 50.13. Effective March 18, 2013, EPA strengthened the primary annual $PM_{2.5}$ NAAQS by lowering the level to 12.0 $\mu g/m^3$ while retaining the secondary annual $PM_{2.5}$ NAAQS at the level of 15.0 $\mu g/m^3$. 78 FR 3086 (January 15, 2013) and 40 CFR 50.18. In this preamble, all references to the $PM_{2.5}$ NAAQS, unless otherwise specified, are to the 1997 24-hour standards (65 $\mu g/m^3$) and annual standards (15.0 $\mu g/m^3$) as codified in 40 CFR 50.7.

[2] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[3] 72 FR 20586, 20589 (April 25, 2007).

[4] 70 FR 944 (January 5, 2005).

[5] *Id.*

San Joaquin Valley (SJV) area as nonattainment for both the 1997 annual $PM_{2.5}$ standard (15.0 μg/m³) and the 1997 24-hour $PM_{2.5}$ standard (65 μg/m³).[6]

The SJV $PM_{2.5}$ nonattainment area encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern.[7] The area is home to 4 million people and is the nation's leading agricultural region. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. The San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) has primary responsibility for developing plans to provide for attainment of the NAAQS in this area. The District works cooperatively with the California Air Resources Board (CARB) in preparing attainment plans. Authority for regulating sources under State jurisdiction in the SJV is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

Between 2007 and 2011, California made six SIP submissions to address nonattainment area planning requirements for the 1997 $PM_{2.5}$ NAAQS in the SJV.[8] We refer to these submissions collectively as the ''2008 $PM_{2.5}$ Plan.'' On November 9, 2011, the EPA approved all elements of the 2008 $PM_{2.5}$ Plan except for the contingency measures, which the EPA disapproved.[9] As part of that action and pursuant to CAA section 172(a)(2)(A), the EPA granted California's request for an extension of the attainment date for the SJV area to April 5, 2015.[10] The EPA took these actions in accordance with the ''Clean Air Fine Particle Implementation Rule,'' which the EPA issued in April 2007 to assist states in their development of SIPs to meet the Act's attainment planning requirements for the 1997 $PM_{2.5}$ NAAQS (hereafter ''2007 $PM_{2.5}$ Implementation Rule'').[11] In July 2013, the State submitted a revised $PM_{2.5}$ contingency measure plan for the SJV, which the EPA fully approved in May 2014.[12]

On January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit (''D.C. Circuit'') issued its decision in a challenge by the Natural Resources Defense Council (NRDC) to the EPA's 2007 $PM_{2.5}$ Implementation Rule.[13] In *NRDC,* the court held that the EPA erred in implementing the 1997 $PM_{2.5}$ standards solely pursuant to the general implementation requirements of subpart 1, without also considering the requirements specific to nonattainment areas for particles less than or equal to 10 μm in diameter (PM_{10}) in subpart 4, part D of title I of the CAA. The court reasoned that the plain meaning of the CAA requires implementation of the 1997 $PM_{2.5}$ standards under subpart 4 because $PM_{2.5}$ particles fall within the statutory definition of PM_{10} and are thus subject to the same statutory requirements as PM_{10}. The court remanded the rule, without vacatur, and instructed the EPA ''to repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' [14]

Consistent with the *NRDC* decision, on June 2, 2014, the EPA published a final rule classifying all areas designated nonattainment for the 1997 and/or 2006 $PM_{2.5}$ standards as ''moderate'' nonattainment under subpart 4.[15] Because this rulemaking did not affect any action that the EPA had previously taken under section 110(k) of the Act on a SIP for a $PM_{2.5}$ nonattainment area, the April 5, 2015 attainment date that the EPA had approved for the SJV area in November 2011 remained in effect.[16] On April 7, 2015, the EPA published a final rule reclassifying the SJV area as ''serious'' nonattainment under subpart 4, based on the EPA's determination that the area could not practicably attain the 1997 $PM_{2.5}$ standards by the April 5, 2015 attainment date.[17] This reclassification was based upon the EPA's evaluation of ambient air quality data from the 2003–2014 period, including the 2012–2014 design value, indicating that it was not practicable for certain monitoring sites within the SJV area to show $PM_{2.5}$ design values at or below the level of the 1997 $PM_{2.5}$ NAAQS by April 5, 2015.[18]

As a consequence of its reclassification as a Serious $PM_{2.5}$ nonattainment area, the SJV area became subject to a new attainment date under CAA section 188(c)(2) and the requirement to submit a Serious area plan that satisfies the requirements of part D of title I of the Act, including the requirements of subpart 4, for the 1997 $PM_{2.5}$ NAAQS.[19] Under subpart 4, the attainment date for an area classified as Serious is as expeditiously as practicable, but no later than the end of the tenth calendar year following designation. As explained in the EPA's final reclassification action, the Serious area plan for SJV must include provisions to assure that the best available control measures (BACM) for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B)), and a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2015, which is the latest permissible attainment date under CAA section 188(c)(2).[20]

Given the December 31, 2015 outermost attainment deadline for the SJV area under section 188(c)(2), the EPA noted its expectation that the State would adopt and submit a Serious area plan for the SJV well before the statutory SIP submission deadlines in CAA section 189(b)(2).[21] The EPA also noted that, in light of the available ambient air quality data and the short amount of time available before the December 31, 2015 attainment date, California may choose to submit a request for an extension of the Serious area attainment date pursuant to CAA

[6] 40 CFR 81.305. The 2001–2003 design values for the San Joaquin Valley were 21.8 μg/m3 for the annual standard and 82 μg/m3 for the 24-hour standard. *See* EPA design value workbook dated August 12, 2014, worksheets ''Table 3a'' and ''Table 3b.''

[7] For a precise description of the geographic boundaries of the San Joaquin Valley $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.

[8] 76 FR 69896 at n. 2 (November 9, 2011).

[9] *Id.* at 69924.

[10] *Id.* Under CAA section 172(a)(2)(A), the attainment date for a nonattainment area is ''the date by which attainment can be achieved as expeditiously as practicable, but no later than five years from the date such area was designated nonattainment,'' except that EPA may extend the attainment date as appropriate for a period no greater than ten years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures. CAA section 172(a)(2)(A); *see also* 40 CFR 51.1004(a) and (b).

[11] 72 FR 20583 (April 25, 2007), codified at 40 CFR part 51, subpart Z. This rule was premised on EPA's prior interpretation of the Act as allowing for implementation of the $PM_{2.5}$ NAAQS solely pursuant to the general nonattainment area provisions of subpart 1 and not the more specific provisions for particulate matter nonattainment areas in subpart 4 of part D, title I of the Act.

[12] 79 FR 29327 (May 22, 2014).

[13] *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013) (''*NRDC*'').

[14] *Id.*

[15] 79 FR 31566 (June 2, 2014). As part of this rulemaking, EPA established a December 31, 2014 deadline for states to submit attainment-related and nonattainment new source review (NNSR) SIP elements required for $PM_{2.5}$ nonattainment areas pursuant to subpart 4. *Id.*

[16] *Id.* at 31569.

[17] 80 FR 18528 (April 7, 2015).

[18] *Id.* at 18529; *see also* proposed rule, 80 FR 1482 (January 12, 2015). Air quality data for 2012–2014 indicated that the highest monitors in the SJV area had design values of 19.7 μg/m³ for the annual standard and 71 μg/m³ for the 24-hour standard.

[19] 80 FR 18258 at 18530–18532.

[20] *Id.*

[21] *Id.* at 18531.

section 188(e) simultaneously with its submission of a Serious area plan for the area.[22]

II. Summary of the San Joaquin Valley 2015 $PM_{2.5}$ Plan

We are proposing action on two California SIP submissions that address the 1997 annual and 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley. The first submission is the ''2015 Plan for the 1997 $PM_{2.5}$ Standard,'' which the State submitted to the EPA on June 25, 2015.[23] The second submission is the ''2018 Transportation Conformity Budgets for the San Joaquin Valley $PM_{2.5}$ SIP, Plan Supplement,'' which the State submitted to the EPA on August 13, 2015.[24] We refer to these SIP submissions collectively herein as the ''2015 $PM_{2.5}$ Plan'' or ''the Plan.'' The 2015 $PM_{2.5}$ Plan is a $PM_{2.5}$ Serious area plan for the SJV and includes a request to extend the applicable attainment dates for the annual and 24-hour $PM_{2.5}$ standards by five and three years, respectively, on the basis that attainment by December 31, 2015 is impracticable, in accordance with CAA section 188(e).

The first submission includes two sets of documents: The ''2015 Plan for the $PM_{2.5}$ Standard,'' adopted by the SJVUAPCD Governing Board on April 16, 2015 and the ''Staff Report, ARB Review of San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' adopted by CARB on May 21, 2015 (''CARB Staff Report''). Both sets of documents include Appendices A and B. To distinguish between the two sets of appendices, we refer to those adopted by the SJVUAPCD Governing Board simply as ''Appendix A'' (''Ambient $PM_{2.5}$ Data Analysis'') and ''Appendix B'' (''Emission Inventory Tables''), and we refer to the additional appendices that accompany CARB's Staff Report as ''WOEA'' for Appendix A (''San Joaquin Valley $PM_{2.5}$ Weight of Evidence Analysis'') and ''CARB Staff Report, Appendix B'' for Appendix B (''San Joaquin Valley $PM_{2.5}$ SIP Additional Emission Reductions Towards Meeting Aggregate Commitment'').

The 2015 $PM_{2.5}$ Plan includes an Executive Summary and a description of air quality standards and requirements applicable to the SJV (Chapter 1), $PM_{2.5}$ challenges and trends (Chapter 2, including a summary of the District's determination regarding air pollutant precursors to $PM_{2.5}$), and health impacts and risk reduction strategy (Chapter 3).[25] Chapter 4 presents the SJVUAPCD's request for an extension of the $PM_{2.5}$ Serious area attainment date; summary arguments for how the SJVUAPCD claims it has met the extension requirements of CAA section 188(e), including a demonstration that attainment of the 1997 $PM_{2.5}$ NAAQS by December 31, 2015 is impracticable; a demonstration, as detailed in Appendix F (''Attainment Demonstration (Provided by ARB)''), of attainment by the most expeditious alternative date practicable; and financial commitments to achieve further emission reductions by replacing heavy duty trucks and residential wood burning devices through the District's truck replacement incentive program and Burn Cleaner Incentive Program, respectively.

Chapter 5, Appendix C (''BACM and MSM for Stationary and Area Sources''), and Appendix D (''BACM and MSM for Mobile Sources (Provided by ARB)'') provide analyses of District and State rules to address the statutory requirements for Best Available Control Measures (BACM) and Most Stringent Measures (MSM) and the District's calculation of de minimis thresholds for directly emitted $PM_{2.5}$ (direct $PM_{2.5}$), nitrogen oxides (NO_X), and sulfur oxides (SO_X).

Chapters 6 and 7 present the District's summary analysis to address the planning requirements for $PM_{2.5}$ Serious nonattainment areas under subparts 1 and 4 of part D, title I of the CAA, including the statutory requirements for extension requests under CAA section 188(e). These include the District's analysis and demonstration, in Chapter 6, of its compliance with the requirements and commitments in the implementation plan for the 1997 $PM_{2.5}$ NAAQS, reasonably available control measures (RACM), reasonable further progress (RFP) and quantitative milestones, contingency measures, transportation conformity budgets for 2014, 2017, and 2020, and permitting of new and modified major stationary sources (*i.e.,* nonattainment new source review (NSR)).[26] Chapter 7 describes the State's and District's regulatory control strategy, incentive programs, technology advancement program, legislative strategy, and public outreach.[27] Finally, Chapter 8 presents the District's commitments to evaluate opportunities for additional emission reductions in general, and specifically from three source categories: Flares, asphalt, and conservation management practices.

The additional documents adopted by CARB on May 21, 2015 supplement the analysis and demonstrations of those adopted by SJVUAPCD. In particular, the CARB Staff Report presents estimated emission reductions by 2018 and 2020 from specific District control measures; an accounting of how the State has complied with its control measure and emission reduction commitments in the 2008 $PM_{2.5}$ Plan; analysis of ammonia effects on reasonable further progress planning; and 2021 attainment year contingency reductions from specific measures.[28] These additional documents also include the methodology and results for the attainment demonstration,[29] a weight of evidence analysis for the attainment demonstration (WOEA), a discussion of additional emission reductions achieved towards the aggregate tonnage commitments of the 2008 $PM_{2.5}$ Plan (CARB Staff Report, Appendix B), and technical clarifications for the 2015 $PM_{2.5}$ Plan as a whole (Technical Clarifications).[30] Finally, transportation conformity budgets for 2018 are presented in a supplemental SIP revision adopted July 23, 2015 and entitled ''Transportation Conformity Budgets for the San Joaquin Valley $PM_{2.5}$ SIP Plan Supplement.''

We present our evaluation of the 2015 $PM_{2.5}$ Plan in section V of this proposed rule. Given the overlap of some control and planning requirements between a $PM_{2.5}$ Serious area plan and a request for extension of the $PM_{2.5}$ Serious area attainment date, we generally address these requirements together rather than separately. For example, we address the BACM requirement for Serious area plans and the MSM requirement for extension requests together in section V.D. of this proposed rule. Similarly, we address the requirement for a Serious area attainment demonstration and the requirement to demonstrate attainment by the most expeditious alternative date practicable, for purposes of requesting an extension of the attainment date,

[22] *Id.*

[23] Letter dated June 25, 2015, from Richard Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, with enclosures.

[24] Letter dated August 13, 2015, from Richard Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, with enclosures.

[25] *See* 2015 $PM_{2.5}$ Plan, Appendix A, regarding trends.

[26] *See also,* 2015 $PM_{2.5}$ Plan, Appendix B and Appendix G (''New Source Review (NSR) and Emission Reduction Credits (ERCs)'').

[27] *See also,* 2015 $PM_{2.5}$ Plan, Appendix E (''Incentive and Other Non-regulatory Strategies'').

[28] 2015 $PM_{2.5}$ Plan, ''Staff Report, ARB Review of San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' release date April 20, 2015, pp. 9, 17–22, 25–26, and 26–27, respectively.

[29] 2015 $PM_{2.5}$ Plan, ''Attainment Demonstration for the San Joaquin Valley 2015 $PM_{2.5}$ Plan for the Annual (15 $\mu g/m^3$) and 24-hour (65 $\mu g/m^3$) Standards.''

[30] 2015 $PM_{2.5}$ Plan, ''Technical Clarifications to the 2015 San Joaquin Valley $PM_{2.5}$ State Implementation Plan.''

together in section V.E.5 of this proposed rule.

III. Completeness Review of the San Joaquin Valley 2015 $PM_{2.5}$ Plan

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submission should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submission of the 2015 $PM_{2.5}$ Plan. The District conducted a public workshop, provided a public comment period, and held a public hearing prior to the adoption of the main SIP submission on April 16, 2015.[31] CARB provided the required public notice and opportunity for public comment prior to its May 21, 2015 public hearing and adoption of the main SIP submission.[32] CARB then adopted its supplemental SIP submission pertaining to 2018 transportation conformity motor vehicle emission budgets at its July 23, 2015 Board meeting after reasonable public notice.[33] Each submission includes proof of publication of notices for the respective public hearings. We find, therefore, that the 2015 $PM_{2.5}$ Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. The initial SIP submission, dated June 25, 2015, became complete by operation of law on December 25, 2015 and we find that the SIP submission pertaining to 2018 transportation conformity motor vehicle emission budgets, dated August 13, 2015, satisfies the completeness criteria in 40 CFR part 51, appendix V.

IV. Clean Air Act Requirements for $PM_{2.5}$ Serious Area Plans

A. $PM_{2.5}$ Serious Area Plan Requirements

Upon reclassification of a Moderate nonattainment area as a Serious nonattainment area under subpart 4, the CAA requires the State to submit the following Serious area SIP elements: [34]

1. A comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area (CAA section 172(c)(3));

2. Provisions to assure that the best available control measures (BACM), including best available control technology (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));

3. A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2015, or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2015 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA sections 188(c)(2) and 189(b)(1)(A));

4. Plan provisions that require reasonable further progress (RFP) (CAA section 172(c)(2));

5. Quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

6. Provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the State demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (CAA section 189(e));

7. Contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. A revision to the nonattainment new source review (NSR) program to lower the applicable ''major stationary source'' [35] thresholds from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)).

Serious area $PM_{2.5}$ plans must also satisfy the requirements for Moderate area plans in CAA section 189(a), to the extent those requirements have not already been satisfied in the Moderate area plan submitted for the area; the general requirements applicable to all SIP submissions under section 110 of the CAA; the requirement to provide necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E); and the requirements concerning enforcement provisions in section 110(a)(2)(C).

The EPA provided its preliminary views on the CAA's requirements for particulate matter plans under part D, title I of the Act in the following guidance documents: (1) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992) (hereafter ''General Preamble''); (2) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental,'' 57 FR 18070 (April 28, 1992) (hereafter ''Supplement''); and (3) ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994) (hereafter ''Addendum''). Additionally, in a proposed rule published March 23, 2015 (80 FR 15340), the EPA provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for the $PM_{2.5}$ standards (hereafter ''Proposed $PM_{2.5}$ Implementation Rule''). We discuss these preliminary interpretations of the Act as appropriate in our evaluation of the 2015 $PM_{2.5}$ Plan in section V of this proposed rule.

[31] SJVUAPCD, ''Notice of Public Workshop [on] Draft Plan for the 1997 $PM_{2.5}$ Standard,'' March 2, 2015; SJVUAPCD, ''Notice of Public Hearing [to] Adopt Proposed 2015 Plan for the 1997 $PM_{2.5}$ Standard,'' March 17, 2015; and SJVUAPCD Governing Board Resolution 15–4–7A, ''In the Matter of Adopting the San Joaquin Valley Unified Air Pollution Control District 2015 Plan for the 1997 $PM_{2.5}$ Standard,'' April 16, 2015.

[32] CARB, ''Notice of Public Meeting to Consider Approval of the San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' April 20, 2015; and CARB Board Resolution 15–9, ''San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' May 21, 2015.

[33] CARB, ''Notice of Public Meeting to Consider the Approval of Transportation Conformity Budgets for the San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' June 19, 2015; and CARB Board Resolution 15–39, ''San Joaquin Valley $PM_{2.5}$ State Implementation Plan,'' July 23, 2015.

[34] 80 FR 18528, 18531 (April 7, 2015).

[35] For any Serious area, the terms ''major source'' and ''major stationary source'' include any stationary source that emits or has the potential to emit at least 70 tons per year of PM_{10} (CAA section 189(b)(3)).

B. Implementation of Best Available Control Measures

Section 189(b)(1)(B) of the Act requires for any serious $PM_{2.5}$ nonattainment area that the State submit provisions to assure that the best available control measures (BACM) for the control of $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the date the area is reclassified as a serious area. The EPA defines BACM as, among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts.[36] We generally consider BACM a control level that goes beyond existing RACM-level controls, for example by expanding the use of RACM controls or by requiring preventative measures instead of remediation.[37] Indeed, as implementation of BACM and BACT is required when a Moderate nonattainment area is reclassified as Serious due to its inability to attain the NAAQS through implementation of ''reasonable'' measures, it is logical that ''best'' control measures should represent a more stringent and potentially more costly level of control.[38]

The EPA has historically provided an exemption from BACM and BACT for source categories that contribute only *de minimis* levels to ambient PM_{10} concentrations in a Serious nonattainment area. The Addendum discusses the following steps for determining BACM:

1. Develop a detailed emission inventory of the sources of $PM_{2.5}$ and $PM_{2.5}$ precursors;
2. Evaluate source category impacts;
3. Evaluate alternative control techniques and their technological feasibility; and
4. Evaluate the costs of control (*i.e.,* economic feasibility).[39]

Once these analyses are complete, the State must use this information to develop enforceable control measures and submit them to the EPA for evaluation under CAA section 110. We use these steps as guidelines in our evaluation of the BACM measures and related analyses in the 2015 $PM_{2.5}$ Plan.

C. Implementation of Reasonably Available Control Measures

When the EPA reclassifies a Moderate area to Serious under subpart 4, the requirement to implement reasonably available control measures (RACM) in section 189(a)(1)(C) remains. Thus, a Serious area $PM_{2.5}$ plan must also provide for the implementation of RACM as expeditiously as practicable, to the extent that the RACM requirement has not been satisfied in the area's Moderate area plan.[40]

However, the EPA does not normally conduct a separate evaluation to determine whether a Serious area plan's measures also meet the RACM requirements. As explained in the Addendum, we interpret the BACM requirement as generally subsuming the RACM requirement—*i.e.,* if we determine that the measures are indeed the ''best available,'' we have necessarily concluded that they are ''reasonably available.''[41] Therefore, a separate analysis to determine if the measures represent a RACM level of control is not necessary. A proposed approval of a Plan's provisions concerning implementation of BACM is also a proposed finding that the Plan provides for the implementation of RACM.

D. Extension of the Serious Area Attainment Date Beyond 2015

Under section 188(e) of the Act, a state may apply to the EPA for a single extension of the Serious area attainment date by up to 5 years, which the EPA may grant if the State satisfies certain conditions. Before the EPA may extend the attainment date for a Serious area under section 188(e), the State must: (1) Apply for an extension of the attainment date beyond the statutory attainment date; (2) demonstrate that attainment by the statutory attainment date is impracticable; (3) have complied with all requirements and commitments pertaining to the area in the implementation plan; (4) demonstrate to the satisfaction of the Administrator that the plan for the area includes the ''most stringent measures'' that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area; and (5) submit a demonstration of attainment by the most expeditious alternative date practicable.[42]

In addition to establishing these preconditions for an extension of the Serious area attainment date, section 188(e) provides that the EPA may consider a number of factors in determining whether to grant an extension and the appropriate length of time for any such extension. These factors are: (1) The nature and extent of nonattainment in the area, (2) the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and trans-boundary emissions from foreign countries), (3) the population exposed to concentrations in excess of the standard in the area, (4) the presence and concentrations of potentially toxic substances in the mix of particulate emissions in the area, and (5) the technological and economic feasibility of various control measures.[43] Notably, neither the statutory requirements nor the discretionary factors identified in section 188(e) include the specific ambient air quality conditions in section 188(d)(2), which must be met for an area to qualify for an extension of a Moderate area attainment date.

The EPA has previously interpreted section 188(e) in approving an extension of the PM_{10} Serious area attainment date for the Phoenix Metropolitan area in Maricopa County, Arizona.[44] We propose to generally follow the steps provided in that rulemaking action for addressing the statutory requirements for an extension of the Serious area attainment date under section 188(e) as described below.

Step 1: Demonstrate that attainment by the statutory Serious area attainment date is impracticable.

Section 188(e) authorizes the EPA to grant a state request for an extension of the Serious area attainment date if,

[36] Addendum at 42010, 42013.

[37] *Id.* at 42011, 42013.

[38] *Id.* at 42009–42010.

[39] *Id.* at 42012–42014.

[40] EPA previously approved California's RACM demonstration for the 1997 $PM_{2.5}$ NAAQS in the SJV (76 FR 69896, November 9, 2011). On May 20, 2015, the Ninth Circuit Court of Appeals remanded this final rule to EPA on the grounds that the California mobile source ''waiver measures'' upon which the plan relied were not federally enforceable components of the approved SIP. *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015). On November 12, 2015, the EPA proposed to approve the relevant waiver measures into the SIP and to thereby make them federally enforceable under the CAA. 80 FR 69915 (November 12, 2015). Final approval of these waiver measures would cure the deficiency in California's RACM demonstration for the 1997 $PM_{2.5}$ NAAQS in the SJV.

[41] Addendum at 42010.

[42] For a discussion of EPA's interpretation of the requirements of section 188(e), *see* Addendum at 42002 (August 16, 1994); 65 FR 19964 (April 13, 2000) (proposed action on PM_{10} Plan for Maricopa County, Arizona); 66 FR 50252 (October 2, 2001) (proposed action on PM_{10} Plan for Maricopa County, Arizona); 67 FR 48718 (July 25, 2002) (final action on PM_{10} Plan for Maricopa County, Arizona); and *Vigil* v. *EPA,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004) (remanding EPA action on PM_{10} Plan for Maricopa County, Arizona but generally upholding EPA's interpretation of CAA section 188(e)).

[43] CAA section 188(e).

[44] *See* 65 FR 19964 (April 13, 2000) (proposed action on Maricopa County Serious Area Plan, annual PM_{10} standard); 66 FR 50252 (October 2, 2001) (proposed action on Maricopa County Serious Area Plan, 24-hour PM_{10} standard); and 67 FR 48718 (July 25, 2002) (final action on Maricopa County Serious Area Plan).

among other things, attainment by the date established under section 188(c) would be impracticable. In order to demonstrate impracticability, the plan must show that the implementation of BACM and BACT on relevant source categories will not bring the area into attainment by the statutory Serious area attainment date. For the SJV, the Serious area attainment date under section 188(c)(2) is December 31, 2015.[45] BACM, including BACT, is the required level of control for serious areas that must be in place before the Serious area attainment date. Therefore, we interpret the Act as requiring that a state provide for at least the implementation of BACM, including BACT, before it can claim impracticability of attainment by the statutory deadline. The statutory provision for demonstrating impracticability requires that the demonstration be based on air quality modeling.[46]

This interpretation parallels our interpretation of the impracticability option for Moderate PM_{10} nonattainment areas in section 189(a)(1)(B), under which implementation of a RACM/RACT control strategy, at a minimum, is a prerequisite for approval of a Moderate area plan demonstrating impracticability of attainment by the Moderate area attainment date.[47]

Step 2: Comply with all requirements and commitments in the applicable implementation plan.

A second precondition for an extension of the Serious area attainment under section 188(e) is a showing that the State has complied with all requirements and commitments pertaining to that area in the implementation plan. We interpret this criterion to mean that the State has implemented the control measures and commitments in the SIP revisions it has submitted to address the applicable requirements in CAA sections 172 and 189 for $PM_{2.5}$ nonattainment areas. For a Serious area attainment date extension request being submitted simultaneously with the initial Serious area attainment plan for the area, the EPA proposes to read section 188(e) not to require the area to have a fully approved Moderate area attainment plan and to allow for extension of the attainment date if the area has complied with all Moderate area requirements and commitments pertaining to that area in the State's submitted Moderate area implementation plan. This interpretation is based on the plain language of section 188(e), which requires the State to comply with all requirements and commitments pertaining to the area in the implementation plan.[48]

Step 3: Demonstrate the inclusion of the most stringent measures.

A third precondition for an extension of the Serious area attainment under section 188(e) is for the State to demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any state, or are achieved in practice in any state, and can feasibly be implemented in the area. The EPA has interpreted the term ''most stringent measure'' (MSM) to mean the maximum degree of emission reduction that has been required or achieved from a source or source category in any other attainment plan or in practice in any other state and that can feasibly be implemented in the area seeking the extension.[49] The Act does not specify an implementation deadline for MSM. Because the clear intent of section 188(e) is to minimize the length of any attainment date extension, we propose that the implementation of MSM should be as expeditiously as practicable.

An MSM demonstration should follow a process similar to a BACM demonstration, but with one additional step, as follows:

1. Develop a detailed emission inventory of the sources of $PM_{2.5}$ and $PM_{2.5}$ precursors;

2. Evaluate source category impacts;

3. Identify the potentially most stringent measures in other implementation plans or used in practice in other states for each relevant source category and, for each measure, determine their technological and economic feasibility in the nonattainment area;

4. Compare the potential MSM for each relevant source category to the measures, if any, already adopted for that source category in the Serious nonattainment area to determine whether such potential MSM would further reduce emissions; and

5. Provide for the adoption and expeditious implementation of any MSM that is more stringent than existing measures or, in lieu of adoption, provide a reasoned justification for rejecting the potential MSM (*i.e.,* provide an explanation as to why such measures cannot feasibly be implemented in the area).[50]

The level of control required under the MSM standard may depend on how well other areas have chosen to control their sources. If a source category has not been well controlled in other areas then MSM could theoretically result in a low level of control. This contrasts with BACM which is determined independently of what other areas have done and depends only on what is the best level of control feasible for an area.[51] On the other hand, given the strategy in the nonattainment provisions of the Act to offset longer attainment timeframes with more stringent emission control requirements, we interpret the MSM provision to assure that it results in additional controls beyond the set of measures adopted as BACM. Two ways to do this are (1) to require that more sources and source categories be subject to MSM analysis than to BACM analysis, that is, by expanding the applicability provisions in the MSM control requirements to cover more sources, and (2) to require reanalysis of any measures adopted in other areas that were rejected during the BACM analysis because they could not be implemented by the BACM implementation deadline to see if they are now feasible for the area given the longer attainment timeframe.[52]

Notably, the ''to the satisfaction of the Administrator'' qualifier on the MSM requirement indicates that Congress granted the EPA considerable discretion in determining whether a plan in fact includes MSM, recognizing that the overall intent of section 188(e) is that we grant as short an extension as practicable. For this reason, the EPA will apply greater scrutiny to the evaluation of MSM for source categories that contribute the most to the $PM_{2.5}$ problem in the SJV and less scrutiny to source categories that contribute little to the $PM_{2.5}$ problem.

Step 4: Demonstrate attainment by the most expeditious alternative date practicable.

Section 189(b)(1)(A) requires that the Serious area plan for the SJV area

[45] Under CAA section 188(c)(2), the attainment date for a Serious area ''shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment . . . .'' EPA designated the SJV area as nonattainment for the 1997 $PM_{2.5}$ standards effective April 5, 2005 (70 FR 944, 956–957, January 5, 2005). Therefore, the latest permissible attainment date under section 188(c)(2), for purposes of the 1997 $PM_{2.5}$ standards in this area, is December 31, 2015.

[46] CAA section 189(b)(1)(A).

[47] General Preamble at 13544; *see also* 65 FR 19964, 19968 (April 13, 2000).

[48] The Ninth Circuit Court of Appeals upheld this interpretation of section 188(e) in *Vigil* v. *Leavitt,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

[49] 65 FR 19964, 19968 (April 13, 2000); *see also* Addendum at 42010.

[50] 65 FR 19964, 19968 (April 13, 2000); *see also* Proposed $PM_{2.5}$ Implementation Rule at 15420 (March 23, 2015).

[51] *Id.*

[52] 65 FR 19964, 19968–19969.

demonstrate attainment, using air quality modeling, by the most expeditious date practicable after December 31, 2015. Because the 1997 annual and 24-hour $PM_{2.5}$ standards are independent standards, section 189(b)(1)(A) requires a demonstration of attainment by the most expeditious date practicable for each standard.[53]

Evaluation of a modeled attainment demonstration consists of two parts: Evaluation of the technical adequacy of the modeling itself and evaluation of the control measures that are relied on to demonstrate attainment. The EPA's determination of whether the plan provides for attainment by the most expeditious date practicable depends on whether the plan provides for implementation of BACM and BACT no later than the statutory implementation deadline, MSM as expeditiously as practicable, and any other technologically and economically feasible measures that will result in attainment as expeditiously as practicable.

Step 5: Apply for an attainment date extension.

Finally, the State must apply in writing to the EPA for an extension of a Serious area attainment date, and this request must accompany the modeled attainment demonstration showing attainment by the most expeditious alternative date practicable. Additionally, the State must provide the public reasonable notice and opportunity for a public hearing on the attainment date extension request before submitting it to the EPA, in accordance with the requirements for SIP revisions in CAA section 110.

V. Review of the San Joaquin Valley $PM_{2.5}$ Serious Area Plan and Extension Application

A. Emissions Inventory

1. Requirements for Emissions Inventories

CAA section 172(c)(3) requires that each SIP include a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the area . . . .'' By requiring an accounting of actual emissions from all sources of the relevant pollutants in the area, this section provides for the base year inventory to include all emissions that contribute to the formation of a particular NAAQS pollutant. For the 1997 $PM_{2.5}$ standards, this includes direct $PM_{2.5}$ as well as the main chemical precursors to the formation of secondary $PM_{2.5}$: NO_X, sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3). Primary $PM_{2.5}$ includes condensable and filterable particulate matter.

A state must include in its SIP submission documentation explaining how the emissions data were calculated. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time the SIP is developed. States are also required to use the EPA's *Compilation of Air Pollutant Emission Factors* (AP–42) [54] road dust method for calculating re-entrained road dust emissions from paved roads.[55] The latest EPA-approved version of California's mobile source emission factor model is EMFAC2014.[56]

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), the State must also submit future ''baseline inventories'' for the projected attainment year and each reasonable further progress (RFP) milestone year, and any other year of significance for meeting applicable CAA requirements.[57] By ''baseline inventories'' (also referred to as ''projected baseline inventories''), we mean projected emissions inventories for future years that account for, among other things, the ongoing effects of economic growth and adopted emissions control requirements. The SIP should include documentation to explain how the emissions projections were calculated.

2. Emissions Inventories in the 2015 $PM_{2.5}$ Plan

The planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_X, VOC, and ammonia) for the SJV $PM_{2.5}$ nonattainment area together with documentation for the inventories are found in SJV Appendix B of the 2015 $PM_{2.5}$ Plan. Annual average inventories and winter daily average inventories, representing conditions in the period November through April, are provided for the base year of 2012 and each baseline year from 2013 to 2020. The winter daily average inventory is useful to evaluate sources of emissions during the portion of the year when the vast majority of exceedances of the 1997 24-hour $PM_{2.5}$ NAAQS occur. Baseline inventories reflect all control measures adopted prior to January 2012. Growth factors used to project these baseline inventories are derived from data obtained from a number of sources such as the California Energy Commission (CEC), the Division of Oil, Gas, and Geothermal Resources (DOGGR), and the California Department of Finance, as well as studies commissioned by the SJV's metropolitan planning organizations.[58]

Each inventory includes emissions from point, area, on-road, and non-road sources. The inventories use EMFAC2014 for estimating on-road motor vehicle emissions.[59] Re-entrained paved road dust emissions were calculated using the EPA's AP–42 road dust methodology.[60]

Tables 1 and 2 provide a summary of the annual average and winter daily average inventories of direct $PM_{2.5}$ and $PM_{2.5}$ precursors for the base year of 2012. The District provides its reasons for selecting 2012 as the base year in Appendix B of the Plan.[61] These inventories provide the basis for the control measure analysis and the RFP and attainment demonstrations in the 2015 $PM_{2.5}$ Plan.

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[53] *Ober* v. *EPA,* 84 F.3d 304 (9th Cir. 1996) (noting that the CAA requires independent treatment of the annual and 24-hour PM_{10} standards in an implementation plan).

[54] EPA released an update to AP–42 in January 2011, which revised the equation for estimating paved road dust emissions based on an updated data regression that included new emission tests results.

[55] 76 FR 6328 (February 4, 2011).

[56] 80 FR 77337 (December 14, 2015).

[57] 40 CFR 51.1007(a), 51.1008(b), and 51.1009(f); *see also* U.S. EPA, ''Emissions Inventory Guidance for Implementation of Ozone [and Particulate Matter] National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' available at *http://www.epa.gov/sites/production/files/2014-10/documents/2014revisedeiguidance_0.pdf.*

[58] 2015 $PM_{2.5}$ Plan, SJV Appendix B, pp. B–23 to B–29.

[59] *Id.* at B–31.

[60] *Id.* at B–27.

[61] *Id.* At B–20, B–21.

TABLE 1—SAN JOAQUIN VALLEY ANNUAL AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2012 BASE YEAR

[Tons/day]

	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.8	38.3	6.9	99.2	13.6
Area Sources	44.1	8.2	0.3	152.1	311.2
On-Road Mobile Sources	7.3	198.0	0.6	54.0	4.7
Off-Road Mobile Sources	5.9	87.7	0.2	35.3	0.0
Total	66.0	332.2	8.1	340.7	329.5

Source: 2015 $PM_{2.5}$ Plan, Appendix B, Tables B–1 to B–5.

TABLE 2—SAN JOAQUIN VALLEY WINTER DAILY AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2012 BASE YEAR

[Tons/day]

	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.5	34.6	6.6	98.7	13.5
Area Sources	40.7	11.7	0.5	156.5	291.8
On-Road Mobile Sources	7.3	204.1	0.6	55.6	4.7
Off-Road Mobile Sources	4.6	68.0	0.2	26.8	0.0
Total	61.0	318.5	7.9	337.5	310.0

Source: 2015 $PM_{2.5}$ Plan, Appendix B, Tables B–1 to B–5.

3. EPA's Evaluation and Proposed Action

The inventories in the 2015 $PM_{2.5}$ Plan are based on the most current and accurate information available to the State and District at the time the Plan and its inventories were being developed in 2014 and 2015, including the latest version of California's mobile source emissions model, EMFAC2014.[62] The inventories comprehensively address all source categories in the SJV and were developed consistent with the EPA's inventory guidance. For these reasons, we are proposing to approve the 2012 base year emissions inventory in the 2015 $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3). We are also proposing to find that the baseline inventories in the Plan provide an adequate basis for the BACM, MSM, impracticability, RFP, and attainment demonstrations in the 2015 $PM_{2.5}$ Plan.

B. Adequate Monitoring Network

We discuss the adequacy of the monitoring network in this preamble to support our finding that the plan appropriately evaluates the $PM_{2.5}$ challenges in the San Joaquin Valley. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure sound attainment demonstrations.

Section 110(a)(2)(B)(i) of the CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. Our regulations in 40 CFR part 58 establish specific requirements for operating air quality surveillance networks to measure ambient concentrations of $PM_{2.5}$, including requirements for measurement methods, network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as State and Local Air Monitoring Stations (SLAMS). A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors we consider when evaluating the monitoring network for air quality modeling.

Under 40 CFR part 58, states are required to submit Annual Network Plans (ANPs) for ambient air monitoring networks for approval by the EPA. The most recent ANP, entitled ''2014 Air Monitoring Network Plan,'' summarizes the state of the ambient air monitoring network in the San Joaquin Valley as it operated from January 2013 through May 2014.[63] During this time, there were 20 monitoring sites operated by either the District or CARB that collected $PM_{2.5}$ data, including 14 monitors designated as SLAMS, ten monitors designated as special purpose monitors (SPMs), four supplemental speciation monitors, and eight non-regulatory monitors.[64] On June 16, 2015, the EPA approved those portions of the State's and District's 2014 Air Monitoring Network Plan that pertain to the adequacy of the network for $PM_{2.5}$ monitoring purposes.[65]

Similarly, the District's previous ANP, entitled ''Annual Air Monitoring Network Plan, June 25, 2013,'' summarizes the state of the ambient air monitoring network in the San Joaquin Valley as it operated from January 2012 through March 2013.[66] During this time, there were 21 monitoring sites operated by either the District or CARB that collected $PM_{2.5}$ data, including 14 monitors designated as SLAMS, 12 monitors designated as special purpose monitors (SPMs), two supplemental speciation monitors, and eight non-regulatory monitors.[67] On May 8, 2014, the EPA approved those portions of the State's and District's 2014 Air Monitoring Network Plan that pertain to the adequacy of the network for $PM_{2.5}$ monitoring purposes.[68]

In sum, the $PM_{2.5}$ monitoring network operated by the District and CARB from January 2012 through May 2014 is adequate to support the air quality modeling in the 2015 $PM_{2.5}$ Plan.

[62] CARB submitted the EMFAC2014 model to the EPA on May 21, 2015 and EPA recently approved that model for use in California SIPs. 80 FR 77337 (December 14, 2015).

[63] SJVAPCD, ''2014 Air Monitoring Network Plan,'' January 28, 2015.

[64] *Id.,* Table 17, p. 25 and Table 19, p. 27.

[65] Letter dated June 16, 2015, from Meredith Kurpius, Manager, EPA Region 9, Air Quality Analysis Office, to Sheraz Gill, Director of Strategies and Incentives, SJVUAPCD.

[66] SJVAPCD, ''Annual Air Monitoring Network Plan,'' June 25, 2013.

[67] SJVAPCD, ''Annual Air Monitoring Network Plan,'' June 25, 2013, Tables 15–17, pp. 25–32.

[68] Letter dated May 8, 2014, from Meredith Kurpius, Manager, EPA Region 9, Air Quality Analysis Office, to Sheraz Gill, Director of Strategies and Incentives, SJVUAPCD.

C. $PM_{2.5}$ Precursors

1. Requirements for the Control of $PM_{2.5}$ Precursors

The composition of $PM_{2.5}$ is complex and highly variable due in part to the large contribution of secondary $PM_{2.5}$ to total fine particle mass in most locations, and to the complexity of secondary particle formation processes. A large number of possible chemical reactions, often non-linear in nature, can convert gaseous SO_2, NO_X, VOC, and ammonia to $PM_{2.5}$, making them precursors to $PM_{2.5}$.[69] Formation of secondary $PM_{2.5}$ may also depend on atmospheric conditions, including solar radiation, temperature, and relative humidity, and the interactions of precursors with preexisting particles and with cloud or fog droplets.[70]

The 2007 $PM_{2.5}$ Implementation Rule contained rebuttable presumptions concerning the four $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. *See* 40 CFR 51.1002(c). Although the rule included presumptions that states should address SO_2 and NO_X emissions in their attainment plans, it also included presumptions that regulation of VOCs and ammonia was not necessary. Specifically, in 40 CFR 51.1002(c), the EPA provided, among other things, that a state was ''not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the state for control measures,'' unless the state or the EPA provided an appropriate technical demonstration showing that emissions from sources of these pollutants ''significantly contribute'' to $PM_{2.5}$ concentrations in the nonattainment area.[71]

In *NRDC,* however, the DC Circuit remanded the EPA's 2007 $PM_{2.5}$ Implementation Rule in its entirety, including the presumptions concerning VOC and ammonia in 40 CFR 51.1002.[72] Although the court expressly declined to decide the specific challenge to these presumptions concerning precursors,[73] the court cited CAA section 189(e)[74] to support its observation that ''[a]mmonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}'' and that ''[f]or a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated.''[75] Consistent with the *NRDC* decision, the EPA now interprets the Act to require that under subpart 4, a state must evaluate all $PM_{2.5}$ precursors for regulation unless, for any given $PM_{2.5}$ precursor, it demonstrates to the Administrator's satisfaction that such precursor does not contribute significantly to $PM_{2.5}$ levels which exceed the NAAQS in the nonattainment area.

The provisions of subpart 4 do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified particulate matter (PM) precursor. The statutory definition of ''air pollutant,'' however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' CAA section 302(g). The EPA has identified SO_2, NO_X, VOC, and ammonia as precursors to the formation of $PM_{2.5}$. Accordingly, the attainment plan requirements of subpart 4 apply to emissions of all four precursor pollutants and direct $PM_{2.5}$ from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*e.g.,* CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standard in the area. Section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.,* requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT), best available control measures (BACM) and best available control technology (BACT), most stringent measures (MSM), and new source review (NSR)) for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other source categories in a given nonattainment area is not necessary. For example, under the EPA's longstanding interpretation of the control requirements that apply to stationary, area, and mobile sources of PM_{10} precursors area-wide under CAA section 172(c)(1) and subpart 4,[76] a state may demonstrate in a SIP submission that control of a certain precursor pollutant is not necessary in light of its insignificant contribution to ambient PM_{10} levels in the nonattainment area.[77]

We are evaluating the 2015 $PM_{2.5}$ Plan in accordance with the presumption embodied within subpart 4 that all $PM_{2.5}$ precursors must be addressed in the State's evaluation of potential control measures, unless the State adequately demonstrates that emissions of a particular precursor or precursors do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the nonattainment area. In reviewing any determination by the State to exclude a $PM_{2.5}$ precursor from the required evaluation of potential control measures, we consider both the magnitude of the precursor's contribution to ambient $PM_{2.5}$ concentrations in the nonattainment area and the sensitivity of ambient $PM_{2.5}$ concentrations in the area to reductions in emissions of that precursor.

2. Evaluation of Precursors in the 2015 $PM_{2.5}$ Plan

In the 2015 $PM_{2.5}$ Plan, the State and District identify NO_X and SO_X as the precursors that are the focus of its control strategy to attain the 1997 $PM_{2.5}$ standards in the San Joaquin Valley.[78] Although no technical demonstration is necessary to support a conclusion consistent with the statutory requirement to regulate specific $PM_{2.5}$ precursors under subpart 4, the 2015 $PM_{2.5}$ Plan nevertheless provides supporting evidence describing the effectiveness of NO_X and SO_X emission controls.[79] By contrast, the 2015 $PM_{2.5}$ Plan includes statements that further

[69] EPA, Air Quality Criteria for Particulate Matter (EPA/600/P–99/002aF, October 2004), Chapter 3.

[70] EPA, Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter (EPA/452/R–12–005, December 2012), p. 2–1.

[71] 40 CFR 51.1002(c)(3), (4). *See also* 2007 $PM_{2.5}$ Implementation Rule, 72 FR 20586 at 20589–97 (April 25, 2007).

[72] *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013).

[73] *Id.* at 437, n. 10.

[74] Section 189(e) of the CAA states that ''[t]he control requirements applicable under plans in effect under this part for major stationary sources of PM_{10} shall also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

[75] 706 F.3d at 436, n. 7 (D.C. Cir. 2013).

[76] General Preamble, 57 FR 13498 at 13539–42 (April 16, 1992).

[77] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}. *See, e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[78] This identification is made in the 2015 $PM_{2.5}$ Plan, WOEA, p. A–3. *See also* Chapter 2 (''$PM_{2.5}$ Trends and Challenges in the San Joaquin Valley''), for more regarding the State and District's analysis that NO_X is a significant precursor (p. 2–8), and that VOC and ammonia are insignificant precursors (pp. 2–19 and 2–27, respectively).

[79] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–24 and Figure 2–19, p. 2–26 (for NO_X) and SJV Appendix A, p. A–47 (for SO_X).

reductions in VOC and ammonia emissions would not contribute to attainment of the 1997 $PM_{2.5}$ NAAQS in the area [80] and provides CARB's and SJVUAPCD's analyses to support these positions.

CARB and the SJVUAPCD base these conclusions on various air quality monitoring and modeling studies, modeling done by CARB for the 2008 $PM_{2.5}$ Plan and for the 2012 plan for attaining the 2006 $PM_{2.5}$ standard in the SJV (''2012 $PM_{2.5}$ Plan''), and other technical information. We discuss below the technical bases provided in the 2015 $PM_{2.5}$ Plan to support these positions with respect to SO_2, NO_X, VOC, and ammonia, as well as EPA's analyses of this information. For more detail on EPA's analyses, please refer to section II of our ''General Technical Support Document for EPA's Proposed Rule on the 2015 $PM_{2.5}$ Plan for the San Joaquin Valley for the 1997 $PM_{2.5}$ NAAQS,'' January 2016 (''General TSD'').

a. SO_2

The 2015 $PM_{2.5}$ Plan recognizes that emissions of SO_2 contribute significantly to ambient $PM_{2.5}$ levels in the San Joaquin Valley, and that ambient $PM_{2.5}$ concentrations are sensitive to reductions in SO_2. It shows the measured contribution of SO_2 emissions to ambient $PM_{2.5}$ concentrations in pie charts portraying the contribution of various pollutant species. For 2010–2012, depending on location, the three-year annual average $PM_{2.5}$ chemical composition was 11–14% ammonium sulfate, while for 2011–2013, the three-year average high day $PM_{2.5}$ chemical composition was 4–6% ammonium sulfate.[81] The Plan further describes the formation of ammonium sulfate as SO_X-limited, given that ammonia is about 80 times more abundant than SO_X for both annual and winter average emission inventories.[82] The ammonium sulfate contribution levels are substantial, particularly with respect to the annual average concentration, although smaller than the contributions of some other $PM_{2.5}$ components (*i.e.,* ammonium nitrate and organic matter).

Ambient $PM_{2.5}$ sensitivity to reductions of SO_2 emissions is also presented in the 2015 $PM_{2.5}$ Plan in the form of modeling results. The results from the sensitivity modeling are cited and discussed below in the NO_X subsection. The 2015 $PM_{2.5}$ Plan infers from the modeling that there is an ambient $PM_{2.5}$ concentration decrease of 0.08 μg/m³ at the projected design value monitoring site in 2019 (Bakersfield-California) per ton of SO_2 reduction in the SJV area.[83] While the 2019 winter average emissions inventory for SO_X (7.6 tpd) is much smaller than that for NO_X (208.0 tpd) in the SJV, the 0.08 μg/m³ $PM_{2.5}$ decrease per ton of emissions reduction is the same for SO_2 as it is for NO_X.[84] Even though the relatively small SO_2 contribution to ambient $PM_{2.5}$ concentrations may leave less scope for reductions, the sensitivity of ambient $PM_{2.5}$ to SO_2 emission reductions indicates that SO_2 emissions contribute significantly to $PM_{2.5}$ levels above the standards in the SJV area.

Based on the technical analyses provided in the Plan, the EPA agrees with the State's and District's conclusion that SO_2 controls must be included in the evaluation of potential control measures for the 1997 $PM_{2.5}$ standards in the SJV, consistent with the requirements of subpart 4.

b. NO_X

The 2015 $PM_{2.5}$ Plan recognizes that emissions of NO_X contribute significantly to ambient $PM_{2.5}$ levels in the San Joaquin Valley, and that ambient $PM_{2.5}$ concentrations are sensitive to reductions in NO_X. The Plan discusses NO_X in conjunction with ammonia, because these precursors react together to create ammonium nitrate, the largest component of ambient $PM_{2.5}$ particles by species in the SJV.[85] The chemical products of ammonia and NO_X (ammonium and nitrate) combine in a 1:1 molecular ratio, but as discussed below, this ratio does not mean that emissions controls for the two precursor pollutants would be equally effective at reducing ambient $PM_{2.5}$. The Plan provides several forms of evidence to indicate that reductions in NO_X emissions are effective in reducing $PM_{2.5}$ concentrations exceeding the standard, and also that they are more effective than reductions in ammonia emissions. The evidence includes speciated data from ambient $PM_{2.5}$ monitors, model simulations of NO_X emission reductions, historical trends, and the relative amounts of NO_X and ammonia.

The 2015 $PM_{2.5}$ Plan indicates that the ambient contribution of NO_X to $PM_{2.5}$ levels in the SJV is substantial. According to available speciation data, ammonium nitrate is the largest chemical component of ambient $PM_{2.5}$ in the SJV, as measured in the southern (Bakersfield), central (Fresno), and northern (Modesto) portions of San Joaquin Valley. It comprises 38–41% of the 2010–2012 average annual $PM_{2.5}$ concentrations and 53–64% of the 2011–2013 average peak 24-hour $PM_{2.5}$ concentrations, the highest percentages being observed in Bakersfield.[86] Using the 2011–2013 annual average $PM_{2.5}$ design value of 17.3 μg/m³ at the Bakersfield-Planz site,[87] the ammonium nitrate concentration is approximately 7.1 μg/m³. If only nitrate itself is considered (*i.e.,* the nitrate part of the ammonium nitrate molecules), the contribution of NO_X represents 5.5 μg/m³, which is approximately 31.8% of the annual average $PM_{2.5}$ concentration.[88]

Similarly, using the 2011–2013 24-hour $PM_{2.5}$ design value of 64.6 μg/m³ at the Bakersfield-California site,[89] the 24-hour average ammonium nitrate

[80] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–19.

[81] 2015 $PM_{2.5}$ Plan, WOEA, Figures 6 and 7, respectively, p. A–16. *See also* 2015 $PM_{2.5}$ Plan, Appendix F, Figure F–2, pp. F–8 to F–9, which shows how ammonium sulfate has decreased slightly at three of the four monitoring sites from the 2004–2006 period to the 2011–2013 period.

[82] 2015 $PM_{2.5}$ Plan, WOEA, p. A–41. This is on a molar or mass-equivalent basis: there are 80 times as many ammonia molecules emitted as would be required to combine with all the emitted SO_2 molecules to form ammonium sulfate, accounting for the emissions in tons per day, the molecular masses, and the chemical formula for ammonium sulfate.

[83] 2015 $PM_{2.5}$ Plan, WOEA, p. A–27.

[84] *Id. See also,* 2015 $PM_{2.5}$ Plan, Appendix B, pp. B–8 and B–11.

[85] 2015 $PM_{2.5}$ Plan, WOEA, Figures 6 and 7, p. A–16.

[86] *Id.*

[87] 2015 $PM_{2.5}$ Plan, Appendix A, p. A–9. The design value for the Bakersfield-Planz site for 2011–2013 is given as a rounded value of 17.0 μg/m³ in Table A–6 in Appendix A of the Plan. For greater precision in estimating species contributions, we have used the unrounded value of 17.3 μg/m³, which we calculated as the average of the 98th percentiles values for each year (14.5, 14.7, and 22.8) as listed in Appendix A, Table A–5. We used the Bakersfield-Planz site (the second highest 2011–2013 annual average) in lieu of the Madera-City site (highest average), consistent with the Plan's weight of evidence for the attainment demonstration. Similarly consistent with the attainment demonstration, this 17.3 μg/m3 value excludes the data from May 5, 2013 for Bakersfield-Planz. Section V.E.5 of this proposed rule has further discussion of these matters. For calculating the ammonium nitrate concentration, we used the 41% value from the Bakersfield pie chart in the 2015 $PM_{2.5}$ Plan, WOEA, Figure 6, p. A–16.

[88] The nitrate fraction of ammonia nitrate (5.5 μg/m³) is calculated as molecular weight of nitrate (62) divided by the molecular weight of ammonium nitrate (80) and equals 77.5 percent.

[89] 2015 $PM_{2.5}$ Plan, Appendix A, p. A–8. The design value for Bakersfield-California (the high site for monitors with complete data for the three years) for 2011–2013 is given as a rounded value of 65 μg/m³ in Table A–4 in Appendix A of the Plan. For greater precision in estimating species contributions, we have used the unrounded value of 64.6 μg/m³, which we calculated as the average of the 98th percentiles values for each year (65.5, 56.4, and 71.8) as listed in Table A–3. For calculating the ammonium nitrate concentration, we used the 64% value from the Bakersfield pie chart in the 2015 $PM_{2.5}$ Plan, WOEA, Figure 7, p. A–16.

concentration on peak $PM_{2.5}$ days is approximately 41.3 μg/m³. If only nitrate itself is considered (*i.e.,* the nitrate part of the ammonium nitrate molecules), the contribution of NO_X represents 32.0 μg/m³, which is approximately 49.6% of the average peak 24-hour $PM_{2.5}$ concentration. Whether considered as ammonium nitrate or simply as nitrate, NO_X is clearly a significant contributor to ambient $PM_{2.5}$ levels above the standard in the SJV.

In addition to this evidence concerning the contribution of NO_X to $PM_{2.5}$ concentrations, the 2015 $PM_{2.5}$ Plan provides evidence that ambient $PM_{2.5}$ concentrations are sensitive to NO_X reductions (*i.e.,* nitrate $PM_{2.5}$ concentrations decrease when NO_X emissions are reduced). The evidence is from modeling, historical trends, and relative proportions of NO_X and ammonia. The 2015 $PM_{2.5}$ Plan provides evidence from past and current photochemical modeling simulations that ambient ammonium nitrate is sensitive to NO_X reductions. The Plan describes past modeling studies that were documented in academic journals.[90] In the various studies, when NO_X emissions were reduced by 50%, ambient ammonium nitrate decreased by 25–50%, depending on the episode modeled and the geographic location.[91] In addition, modeling for the 2012 $PM_{2.5}$ Plan for the 2006 24-hour $PM_{2.5}$ NAAQS, whose results were relied on for the 2015 $PM_{2.5}$ Plan, also shows substantial sensitivity of ambient $PM_{2.5}$ concentrations to reductions in NO_X emissions. The State modeled the effect of a 25% reduction in NO_X emissions on ambient 24-hour $PM_{2.5}$ concentrations in 2019 and combined this with the emission mass (tons per day) to determine that the $PM_{2.5}$ concentrations would be reduced by 0.08 μg/m3 at the Bakersfield-California site (the design value site for 2019) and decreases of a similar order of magnitude (*i.e.,* 0.03 to 0.09 μg/m3) at other monitors in the SJV.[92]

The 2015 $PM_{2.5}$ Plan provides additional (non-modeling) evidence on the effectiveness of NO_X reductions. The historical downward trends of NO_X emissions and of ambient nitrate concentrations are discussed in Chapter 2 and the weight of evidence analysis (WOEA) of the Plan.[93] Annual average NO_X emissions levels are plotted against ammonium nitrate concentrations at Bakersfield and Fresno, and in each case have decreased by about 35–40% from 2004 to 2012.[94] This shows that NO_X emissions and ammonium nitrate concentrations are correlated with one another. The conclusion that $PM_{2.5}$ nitrate concentrations are more limited by NO_X emissions than by ammonia emissions is strengthened by the fact that this reduction in ambient ammonium nitrate occurred despite an increase in emissions of ammonia, the other precursor to ammonium nitrate, during the same period.[95]

The 2015 $PM_{2.5}$ Plan further describes the effectiveness of NO_X controls by characterizing it as the ''limiting precursor'' in ammonium nitrate formation, based on the relative amounts of NO_X and ammonia. Based on monitored concentrations and the emissions inventory, CARB and the SJVUAPCD conclude that NO_X is the limiting precursor and briefly illustrates this concept in its WOEA.[96] One molecule each of NO_X and ammonia is required to form each molecule of ammonium nitrate. If NO_X is in short supply relative to ammonia, then NO_X is the limiting factor in ammonium nitrate formation.[97]

The WOEA analysis includes plots [98] of ammonia and nitric acid (which contains nitrate) concentrations at two monitoring sites in the SJV (Angiola, a rural site, and Fresno, an urban site) that were measured during the winter 2000–2001 CRPAQS [99] study and reported in Lurmann *et al.* (2006).[100] CARB notes that in this study, ammonia concentrations are at least an order of magnitude larger than those of nitrate and notes Lurmann *et al.*'s conclusion that NO_X is the limiting precursor. CARB and the SJVUAPCD did not, however, present more current information about ammonia concentrations.

The WOEA also considers emissions inventories to support the argument that NO_X is the limiting precursor. The WOEA normalized NO_X emissions using the relative molecular weights of NO_X and ammonia, in order to reflect the number of molecules of each available to react with each other.[101] In 2012, the normalized amount of NO_X available was 37–38% of the amount of ammonia for both annual and winter averages, while it is projected to be 21% of the amount of ammonia in 2020. This shows the scarcity of NO_X relative to ammonia and implies that NO_X is the limiting precursor in the formation of ammonium nitrate.

Based on the range of technical analyses provided in the Plan and other information available to the EPA, we agree with the State's and District's conclusion that NO_X controls must be included in the evaluation of potential control measures for the 1997 $PM_{2.5}$ standards in the SJV, consistent with the requirements of subpart 4.

c. Ammonia

The 2015 $PM_{2.5}$ Plan states that, based on modeling, emissions inventory, and monitoring studies, ''[b]ecause of [the] regional surplus in ammonia, even substantial ammonia emissions reductions yield a relatively small reduction in nitrate'' [102] and ''[a]mmonia emission reductions are approximately an order of magnitude less effective'' than NO_X emission reductions in reducing ambient $PM_{2.5}$

[90] The academic journal papers are described in 2015 $PM_{2.5}$ Plan, WOEA, Section 5 (''Secondary Ammonium Nitrate Formation''), pp. A–23–A–29.

[91] Chen, J., Lu, J., Avise, J.C., DaMassa, J.A., Kleeman, M.J., Kaduwela, A.P., 2014, Seasonal Modeling of $PM_{2.5}$ in California's San Joaquin Valley, Atmospheric Environment, 92, 182–190, doi:10.1016/j.atmosenv.2014.04.030. Kleeman, M.J., Ying, Q., and Kaduwela, A., Control strategies for the reduction of airborne particulate nitrate in California's San Joaquin Valley, Atmospheric Environment, 2005, 39, 5325–5341. Liang, J., Gürer, K., Allen, P.D., Zhang, K.M., Ying, Q., Kleeman, M., Wexler, A., and Kaduwela, A., 2006, A photochemical model investigation of an extended winter PM episode observed in Central California: Model Performance Evaluation, Proceedings of the 5th Annual CMAQ Models-3 User's Conference, Chapel Hill, NC. Livingstone, P.L. *et. al.,* 2009, ''Simulating PM Concentrations During a Winter Episode in a Subtropical Valley and Sensitivity Simulations and Evaluation methods'', Atmospheric Environment, 43: 5971–5977. doi:10.1016/j.atmosenv.2009.07.033. Pun, B.K., Balmori R.T.F, and Seigneur, C., 2009, Modeling wintertime particulate matter formation in Central California, Atmospheric Environment, 43, 402–409. Different models and emission inventories in these studies conducted over the years also contribute to the variation in results.

[92] 2015 $PM_{2.5}$ Plan, WOEA, Table B–2 (''Modeled $PM_{2.5}$ air quality benefit per ton of valley-wide precursor emission reductions''), p. A–27.

[93] 2015 $PM_{2.5}$ Plan, Chapter 2, pp. 2–8 and 2–9; and CARB's Staff Report, Appendix A (*i.e.,* WOEA), pp. A–60 to A–61.

[94] 2015 $PM_{2.5}$ Plan, Chapter 2, Figure 2–19, p. 2–26; 2015 $PM_{2.5}$ Plan, CARB Staff Report, pp. 5–6; and WOEA, Figure 44, p. A–60.

[95] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–24.

[96] 2015 $PM_{2.5}$ Plan, WOEA, section 5.b, pp. A–18 to A–19. *See also* 2015 p.m.2.5 Plan, Chapter 2, section 2.6, pp. 2–18 to 2–27.

[97] As noted below in the ammonia subsection, the ''limiting precursor'' concept is not absolute, and must be used with caution. However, for NO_X it does support evidence from the modeling results that NO_X significantly contributes to exceedances of the 1997 $PM_{2.5}$ NAAQS.

[98] 2015 $PM_{2.5}$ Plan, WOEA, Figures 11 and 12, pp. A–21 to A–22.

[99] CRPAQS is the California Regional Particulate Air Quality Study. More information is available about CRPAQS at *http://www.arb.ca.gov/airways/ccaqs.htm.*

[100] Lurmann, F.W., Brown, S.G., McCarthy, M.C., and Roberts, P.T., December 2006, Processes Influencing Secondary Aerosol Formation in the San Joaquin Valley during Winter, Journal of Air and Waste Management Association, 56, 1679–1693.

[101] WOEA, Table 1, p. A–20.

[102] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–19.

concentrations.[103] To support this finding, CARB and the SJVUAPCD discuss the ambient contribution of ammonia to measured $PM_{2.5}$ levels in the SJV and the sensitivity of ambient $PM_{2.5}$ to ammonia reductions. The latter includes discussion of the relative abundance of NO_X and ammonia, and of modeled simulations of further reductions in ammonia emissions.

The Plan indicates that ammonia contributes to ambient concentrations of $PM_{2.5}$, in the form of ammonium nitrate and ammonium sulfate. As noted above in our discussion of NO_X, ammonium nitrate comprises 38–41% of the 2010–2012 average annual $PM_{2.5}$ concentrations and 53–64% of the 2011–2013 average peak 24-hour $PM_{2.5}$ concentrations, the highest percentages being observed in Bakersfield.[104] Ammonium sulfate contributes an additional 11–14% of the 2010–2012 average annual $PM_{2.5}$ concentrations and 4–6% of the 2011–2013 average peak 24-hour $PM_{2.5}$ concentrations, with the highest percentages similarly being observed in Bakersfield.[105]

Using the highest 2011–2013 annual average $PM_{2.5}$ design value of 17.3 μg/m³ at the Bakersfield-Planz site, the ammonium nitrate concentration is approximately 7.1 μg/m³ and the ammonium sulfate concentration is approximately 2.4 μg/m³.[106] If only ammonium is considered (*i.e.,* the ammonium part of the ammonium nitrate and ammonium sulfate molecules), the contribution of ammonium represents 2.3 μg/m³, or 13.0% of the annual average $PM_{2.5}$ concentration.[107]

Similarly, using the 2011–2013 24-hour $PM_{2.5}$ design value of 64.6 μg/m³ at the Bakersfield-California site, the 24-hour average ammonium nitrate concentration on peak $PM_{2.5}$ days is approximately 41.3 μg/m³ and the ammonium sulfate concentration is approximately 3.9 μg/m³.[108] If only ammonium itself is considered (*i.e.,* the ammonium part of the ammonium nitrate and ammonium sulfate molecules), the contribution of ammonium represents 10.4 μg/m³, which is approximately 16.0% of the average peak 24-hour $PM_{2.5}$ concentration.[109]

Ammonia emissions are essential to the formation of both of these components of the ambient particulate matter, and the EPA finds that these levels of contribution are a substantial fraction of the SJV's 2011–2013 annual average design value of 17.3 μg/m³, as measured at the Bakersfield-Planz site, and the 24-hour design value of 64.6 μg/m³, as measured at the Bakersfield-California site. This is evidence that emissions of ammonia contribute significantly to ambient $PM_{2.5}$ concentrations that exceed the 1997 $PM_{2.5}$ NAAQS in the SJV.

Next we examined information in the 2015 $PM_{2.5}$ Plan regarding the sensitivity of ambient $PM_{2.5}$ levels in the SJV to potential ammonia emission control. On this issue there is conflicting evidence. Based on evidence that ammonia appears not to be the limiting precursor for ammonium nitrate formation and that modeled ammonia reductions are ineffective relative to NO_X reductions,[110] CARB and the SJVUAPCD conclude that controls for ammonia are not warranted. However, the EPA's own evaluation of the modeling indicates that ammonia controls can be effective at reducing ambient $PM_{2.5}$ in some locations and can be more effective at certain times of year.

CARB and the SJVUAPCD 's evidence discussed above to support the argument that NO_X is the limiting precursor for ammonia nitrate formation is also presented as evidence that ammonia is *not* the limiting precursor, and thus to argue that ambient $PM_{2.5}$ levels would not be sensitive to ammonia reductions.[111] In the Plan, CARB and the SJVUAPCD state that there is both an abundance of ambient ammonia relative to ambient nitrate, and an abundance of ammonia emissions relative to NO_X emissions. CARB and the SJVUAPCD also indicate that there is an abundance of gaseous ammonia relative to particulate ammonium at multiple locations during the 2000–2001 winter episode in the CRPAQS study,[112] so that even under conditions favorable to ammonium nitrate formation, a substantial amount of unreacted ammonia remains.[113] Based on these multiple pieces of evidence on the abundance of ammonia, CARB and the SJVUAPCD conclude that ammonia is not the limiting factor for ammonium nitrate formation and, thus, that reducing ammonia emissions would not reduce ambient $PM_{2.5}$ in the SJV.

CARB and the SJVUAPCD also considered air quality modeling analyses to evaluate the effectiveness of reducing ammonia as compared to other precursors, and to $PM_{2.5}$ decreases needed for attainment. Based on modeling a 25% reduction in ammonia emissions, holding direct $PM_{2.5}$ and other precursor emissions constant, the Plan states that per ton per day of ammonia emissions reduction, there would be a 0.005 to 0.010 μg/m³ decrease in ambient $PM_{2.5}$ concentrations across the Valley, including a 0.008 μg/m³ effect at the Bakersfield-California site.[114] By comparing these sensitivities to the effect of a 25% reduction of NO_X emissions, the Plan states that, on a per ton basis, reducing ammonia is only about 10% as effective as reducing NO_X.[115] Thus, based on this air quality modeling, CARB and the SJVUAPCD conclude that additional ammonia control is considerably less effective than NO_X control.

The State and District assume in the 2015 $PM_{2.5}$ Plan that additional ammonia control, as modeled, would provide limited benefit for attainment planning purposes. They also conclude, based upon the various forms of information and analyses described above, that ammonia emission reductions are much less effective than direct $PM_{2.5}$ or NO_X emission reductions, and thus argue that ''[a]mmonia is not a significant precursor to $PM_{2.5}$ values in the Valley.'' [116]

The EPA finds the modeling and other analyses presented and referred to in the 2015 $PM_{2.5}$ Plan to be credible, but the modeling analyses nonetheless show

[103] WOEA, p. A–29.

[104] 2015 $PM_{2.5}$ Plan, WOEA, Figures 6 and 7, p. A–16.

[105] *Id.*

[106] *See* n. 87 *supra.* In addition, for calculating the ammonium sulfate concentration, we used the 14% ammonium sulfate values from the Bakersfield pie chart in the 2015 $PM_{2.5}$ Plan, WOEA, Figure 6, p. A–16.

[107] The ammonium fraction of ammonium nitrate (1.6 μg/m³) is calculated as the molecular weight of ammonium (18) divided by the molecular weight of ammonium nitrate (80), which is 22.5 percent of the mass. The ammonium fraction of ammonium sulfate (0.7 μg/m³) is calculated as the molecular weight of the two ammonium molecules (36) divided by the molecular weight of ammonium sulfate (132), which is 27.3 percent of the mass.

[108] *See* n. 89 *supra.* In addition, for calculating the ammonium sulfate concentration, we used the 6% ammonium sulfate values from the Bakersfield pie chart in the 2015 $PM_{2.5}$ Plan, WOEA, Figure 6, p. A–16.

[109] The ammonium fraction of ammonium nitrate (9.3 μg/m³) is calculated as the molecular weight of ammonium (18) divided by the molecular weight of ammonium nitrate (80), which is 22.5 percent of the mass. The ammonium fraction of ammonium sulfate (1.1 μg/m³) is calculated as the molecular weight of the two ammonium molecules (36) divided by the molecular weight of ammonium sulfate (132), which is 27.3 percent of the mass.

[110] 2015 $PM_{2.5}$ Plan, Chapter 2, Section 2.6.2, pp. 2–21 to 2–27 and WOEA, pp. A–23 to A–29.

[111] WOEA, pp. A–18 to A–22.

[112] WOEA, pp. A–22 and Figure 13, p. A–23.

[113] As noted above, NO_X emissions have been decreasing and ammonia emissions increasing, so under the State's reasoning, this relationship would be expected to continue.

[114] WOEA, Table 2, p. A–27.

[115] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 27.

[116] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–27.

that additional reductions in ammonia may reduce ambient $PM_{2.5}$ levels to varying degrees. In the various studies, when ammonia emissions were reduced by up to 50%, ambient ammonium nitrate decreased by a range of approximately 5–25%, depending on the episode modeled and the geographic location evaluated.[117] Modeling conducted by ARB staff for the 2012 $PM_{2.5}$ Plan for attaining the 2006 24-hour $PM_{2.5}$ NAAQS indicated that for emissions reduction within Kern County, a one ton per day decrease in ammonia would lead to a 0.02 μg/m^3 improvement in the $PM_{2.5}$ 24-hour design value.[118] If this rate were to remain constant as ammonia emissions decrease, and if this same sensitivity applied to valley-wide reductions, it would mean that a 50% reduction in the ammonia emissions inventory (estimated in the 2015 $PM_{2.5}$ Plan at 329.5 tpd annual average in 2012) would be expected to reduce 24-hour $PM_{2.5}$ concentrations by more than 3 μg/m^3, an amount that the EPA would not consider insignificant.

The percentages for ammonia benefits are generally smaller than those for NO_X reductions, but a range of modeling results show that reductions in ammonia emissions under certain circumstances can effectively help to reduce ambient $PM_{2.5}$. The fact that all the modeling studies find at least some benefit from ammonia control shows that the concept of NO_X as a ''limiting precursor'' in the formation of ammonium nitrate particles discussed above is not absolute. In addition, the test for determining whether emission reduction measures for a particular precursor must be evaluated for purposes of timely attainment should not be based exclusively on the control effectiveness of the precursor relative to other precursors, but must also consider whether emissions of the precursor ''contribute significantly'' to ambient $PM_{2.5}$ levels which exceed the $PM_{2.5}$ standards in the nonattainment area. In other words, the fact that control of NO_X may be more important than the control of ammonia in relative terms does not mean that a state should not evaluate regulations for both as part of a comprehensive plan to attain the $PM_{2.5}$ NAAQS, and to do so expeditiously as required by the CAA.

Taking into consideration a number of factors, the EPA does not agree with the conclusion in the Plan that the more than 100,000 annual tons of ammonia emissions from sources in the SJV area do not contribute significantly to $PM_{2.5}$ levels exceeding the 1997 $PM_{2.5}$ NAAQS. First, the information provided by the State and District in the Plan shows that ammonia contributes to a large fraction of measured $PM_{2.5}$ concentrations in the SJV area, in the form of ammonium nitrate and, to a lesser extent, ammonium sulfate. Based on data presented in the 2015 $PM_{2.5}$ Plan, ammonia emissions, in the form of ammonium, are responsible for approximately 13% of the annual average concentration and 16% of the 24-hour average at the design value site for the San Joaquin Valley.

Second, modeled evidence submitted by the State and studies available to the EPA indicate that although ammonia control is less effective at reducing $PM_{2.5}$ concentrations compared to NO_X control, reducing ammonia emissions in the SJV would reduce $PM_{2.5}$ by varying amounts throughout the nonattainment area. Studies indicate that reducing ammonia does not have a uniform effect across a large nonattainment area during all times of the year; ammonia reductions can be more effective at reducing $PM_{2.5}$ concentrations in specific locations during certain times of the year. Reductions in ammonia in conjunction with reductions of direct $PM_{2.5}$, SO_2, and NO_X would help to provide for attainment of the $PM_{2.5}$ NAAQS in the SJV area.

Finally, despite the fact that a broad range of emission reduction measures have been implemented to reduce emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors, the Plan also indicates that attainment by the statutory attainment date is impracticable. This underscores the continuing severity of the $PM_{2.5}$ nonattainment problem in the SJV and the need for a robust assessment of potential control measures (*e.g.,* BACM and MSM) for direct $PM_{2.5}$ and $PM_{2.5}$ precursors, including potential ammonia control measures which may be effective in reducing ambient $PM_{2.5}$ concentrations.

Given the severity of the $PM_{2.5}$ nonattainment problem in the SJV, the high degree to which controls have already been applied to the emission of $PM_{2.5}$ and its precursor pollutants, the demonstration that attainment in the SJV by 2015 is impracticable, and the documentation in the 2015 $PM_{2.5}$ Plan showing that ammonia emissions are responsible for more than 2 μg/m^3 of the annual average $PM_{2.5}$ concentration at the Bakersfield-Planz site, and for more than 10 μg/m^3 of the peak day 24-hour average $PM_{2.5}$ concentration at the Bakersfield-California site, the EPA does not agree at this time with the conclusion in the Plan that ammonia emissions do not contribute significantly to $PM_{2.5}$ levels exceeding the $PM_{2.5}$ standards in the SJV.

Although the Plan states that ammonia is not a significant precursor to ambient $PM_{2.5}$ levels, and that additional controls for ammonia are not necessary to attain the $PM_{2.5}$ standards in the SJV, the Plan nonetheless provides an evaluation of control measures currently implemented in the SJV that reduce ammonia emissions and other potential ammonia control measures. We discuss the State's ammonia control evaluation in section V.D. of this proposed rule.

d. VOC

The 2015 $PM_{2.5}$ Plan states that VOCs are not a significant precursor to ambient $PM_{2.5}$ levels in the San Joaquin Valley and that further reductions in VOC emissions would not contribute to $PM_{2.5}$ attainment. To support this finding, CARB and the SJVUAPCD discuss the ambient contribution of VOC to measured $PM_{2.5}$ levels in the SJV, the indirect role of VOC in ammonium nitrate formation, and modeled simulations of further reductions in VOC emissions.

There are two routes by which VOC can contribute to ambient $PM_{2.5}$. The first is through various chemical reactions leading to the formation of Secondary Organic Aerosols (SOA). The second is through photochemical reactions that create oxidants such as ozone and the hydroxyl radical (OH), which in turn oxidize NO_X emissions to nitrate or SO_X emissions to sulfate, leading to the formation of particulate ammonium nitrate or particulate ammonium sulfate. Chapter 2 of the 2015 $PM_{2.5}$ Plan discusses both roles of VOC in $PM_{2.5}$ formation,[119] as does the Plan's weight of evidence analysis.[120]

For the direct contribution of VOC to $PM_{2.5}$, the 2015 $PM_{2.5}$ Plan states that modeling for annual average $PM_{2.5}$ for the 2008 $PM_{2.5}$ Plan found that anthropogenic SOA were about 3–5% of total organic aerosol, and that SOA were mainly formed during the summer from non-anthropogenic sources.[121] The SJVUAPCD states that the winter anthropogenic contribution that is of interest for the 1997 24-hour $PM_{2.5}$ NAAQS would necessarily be lower because less SOA forms at winter temperatures, which are lower than temperatures for the annual average. CARB and the SJVUAPCD also cite a

[117] WOEA, pp. A–24 to A–25.

[118] WOEA, p. A–29.

[119] 2015 $PM_{2.5}$ Plan, Chapter 2, pp. 2–20 to 2–21.

[120] WOEA, section 5.d (''Role of VOC in ammonium nitrate formation''), pp. A–30 to A–39, and section 6 (''Secondary Organic Aerosol Formation''), pp. A–39 to A–40.

[121] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–20.

study by Chen *et al.*[122] for the winter 2000–2001 CRPAQS episode. This study found that the SOA portion of total organic aerosol had a maximum value of 4.26 μg/m^3 with concentrations at Bakersfield of 2.28 μg/m^3 and at Fresno of 2.46 μg/m^3, which represent 4% and 6% of the total organic aerosol at those locations. These locations typically represent the highest $PM_{2.5}$ concentrations for the southern and central portions of the San Joaquin Valley.

Applying this roughly 5% SOA proportion to the organic carbon portion of the measured 2011–2013 peak day 24-hour average $PM_{2.5}$ composition shows that, by mass, SOA is about 0.9% of total ambient $PM_{2.5}$ at Bakersfield-California and 1.5% of ambient $PM_{2.5}$ at Fresno.[123] The EPA notes that because anthropogenic SOA is only a portion of the total SOA, the portion due to controllable anthropogenic sources would be even less. CARB and the SJVUAPCD conclude that these modeling studies show that SOA is not a substantial component of peak day (*i.e.,* winter) 24-hour ambient $PM_{2.5}$ concentrations in the SJV and that the potential for reducing ambient $PM_{2.5}$ through VOC emission reductions is very limited. We do not have comparable information at this time to evaluate whether or not SOA is a substantial component of annual average $PM_{2.5}$ concentrations.

For the indirect contribution of VOC to $PM_{2.5}$, nitrate formation via daytime photochemistry, CARB and the SJVUAPCD assert that this route is also not a substantial contributor, based on modeled sensitivity to VOC reductions. For one such study there were relatively low modeled concentrations of ozone, which did not appear consistent with nitrate formation via daytime oxidant (ozone) photochemistry, which would be expected to have elevated ozone levels.[124] The Plan reviews essentially the same studies that the State relied on in the 2008 $PM_{2.5}$ Plan for attainment of the 1997 $PM_{2.5}$ standards,[125] except for one additional 2014 study by Chen *et. al.*[126] The EPA's review of these studies and of the 2008 $PM_{2.5}$ Plan's examination of the studies is covered in the technical support document (TSD) for the EPA's final action on the 2008 $PM_{2.5}$ Plan (''2008 $PM_{2.5}$ Plan TSD'').[127] The 2014 Chen *et. al.* paper presented results of modeling the 1st and 4th quarters of 2007 using the CMAQ model (the same period and model that was used for the 2008 $PM_{2.5}$ Plan), and also of modeling the winter 2000 CRPAQS episode using the UCD/CIT (University of California, Davis/California Institute of Technology) model. The paper explored the sensitivity of $PM_{2.5}$ to reductions of the various precursors. The CMAQ modeling showed that reducing anthropogenic VOC actually increases $PM_{2.5}$ design values, while the UCD/CIT modeling showed that it has a negligible effect. NO_X vs. VOC isopleth diagrams from the paper are reproduced in the 2015 $PM_{2.5}$ Plan, and illustrate these effects.[128]

The findings from those reviews remain the same for the current Plan: Past modeling studies vary on whether controlling VOC reduces $PM_{2.5}$, but the most reliable ones show VOC control has little benefit, or even a disbenefit. As detailed in the EPA's 2008 $PM_{2.5}$ Plan TSD and in the Plan's WOEA,[129] the studies for which VOC control showed a benefit at some times and places are less reliable because they used unrealistic emissions levels, unrealistic control scenarios, or the effect occurred at $PM_{2.5}$ concentrations no longer reached in the SJV. The WOEA also suggests that, in this context of indirect $PM_{2.5}$ formation from VOC, the model boundary conditions have sufficient ozone flowing in from outside the SJV area,[130] implying that VOC reductions would have little effect on ambient $PM_{2.5}$ levels exceeding the standard in the SJV.

The overall conclusion is that the effect of reducing VOC emissions is somewhat uncertain, but in general produces little benefit or even a disbenefit in $PM_{2.5}$ concentrations.

The modeling for the prior 2012 $PM_{2.5}$ Plan, which indicates a disbenefit from controlling VOC at important geographic locations, adds to the evidence from past studies, and is incorporated into the 2015 $PM_{2.5}$ Plan. This is shown by negative $PM_{2.5}$ sensitivities (that is, decreased VOC emissions result in increased $PM_{2.5}$ levels) for multiple locations.[131] In addition, a diagram of model $PM_{2.5}$ response at the Bakersfield-California site to various combinations of NO_X and VOC reductions show graphically that VOC reductions increase $PM_{2.5}$, for any given level of NO_X.[132] For other monitoring sites, such as Fresno and Angiola, these NO_X vs. VOC diagrams show mixed effects on $PM_{2.5}$, albeit generally of small magnitude, depending on the level of ambient $PM_{2.5}$ as VOC emissions are reduced.

The 2015 $PM_{2.5}$ Plan includes additional VOC vs. NO_X isopleth diagrams from a 2005 Kleeman *et al.* paper.[133] The key ones show that the effect of reducing VOC for all sources increases total $PM_{2.5}$ nitrate for any

[122] Chen, J., Ying, Q., and Kleeman, M.J., 2010, Source apportionment of wintertime secondary organic aerosol during the California regional PM_{10}/$PM_{2.5}$ air quality study, Atmospheric Environment, 44(10), 1331–1340.

[123] The contribution of Organic Matter to 2011–2013 peak day 24-hour $PM_{2.5}$ levels was 18 percent at Bakersfield and 30 percent at Fresno (*see* WOEA, Figure 7, p. A–16). Five percent of these proportions gives 0.90 percent SOA at Bakersfield and 1.5 percent SOA at Fresno. As a fraction of the 2013 design values of 64.6 μg/m^3 at Bakersfield-California and 63.5 μg/m^3 at Fresno-Winery, these percentages give SOA contributions of 0.58 μg/m^3 at Bakersfield-California and 0.95 μg/m^3 at Fresno-Winery.

[124] Pun, B.K., Balmori R.T.F, and Seigneur, C., 2009, Modeling Wintertime Particulate Matter Formation in Central California, Atmospheric Environment, 43: 402–409. doi: 10.1016/j.atmosenv.2008.08.040.

[125] 2015 $PM_{2.5}$ Plan, Chapter 2, pp. 2–20 to 2–21; WOEA, p. A–3, and section 5.d, pp. A–30 to A–39.

[126] Chen, J., Lu, J., Avise, J.C., DaMassa, J.A., Kleeman, M.J., Kaduwela, A.P., 2014, Seasonal Modeling of $PM_{2.5}$ in California's San Joaquin Valley, Atmospheric Environment, 92, 182–190, doi: 10.1016/j.atmosenv.2014.04.030.

[127] EPA Region 9, ''Technical Support Document and Responses to Comments Final Rule on the San Joaquin Valley 2008 $PM_{2.5}$ State Implementation Plan,'' September 30, 2011, section II.C.

[128] WOEA, p. A–37 to A–38, Figs. 23 and 24. $PM_{2.5}$ increases when VOC decreases, for any given level of NO_X.

[129] WOEA, p. A–3, and section 5.d, pp. A–30 to A–39.

[130] WOEA, p. A–38. *See also,* Kleeman, M.K., Ying, Q., and Kaduwela, A., 2005, Control strategies for the reduction of airborne particulate nitrate in California's San Joaquin Valley, Atmospheric Environment, 39: 5325–5341 September 2005. doi: 10.1016/j.atmosenv.2005.05.044; cited in Plan Modeling Protocol.p.F–36). A similar statement is made in the 2014 Chen *et al.* paper, citing Qi Ying, Jin Lu, Michael Kleeman, Modeling air quality during the California Regional PM_{10}/$PM_{2.5}$ Air Quality Study (CPRAQS) using the UCD/CIT source-oriented air quality model—Part III. Regional source apportionment of secondary and total airborne particulate matter, Atmospheric Environment, Volume 43, Issue 2, January 2009, Pages 419–430, ISSN 1352–2310, DOI: 10.1016/j.atmosenv.2008.08.033. The Chen paper actually cites ''Part I'' of the Ying paper, not this Part III. However, none of these papers gives the basis for the statement that background ozone is the dominant nitrate oxidant.

[131] WOEA, Table 2, p. A–27 (*see* VOC columns for Bakersfield, Visalia, and Corcoran).

[132] WOEA, Figure 18, p. A–28. This diagram shows the model $PM_{2.5}$ response at the Bakersfield-California site to reductions in various combinations of precursors. Subfigure ''b)'' shows NO_X reductions plotted against VOC reductions. For a given level of NO_X, in decreasing VOC by moving leftward along a horizontal line (representing constant NO_X), one crosses the lines of constant $PM_{2.5}$ (isopleths) into regions of increased $PM_{2.5}$. The 2012 $PM_{2.5}$ Plan presents similar diagrams for the various monitoring sites. 2012 $PM_{2.5}$ Plan, Chapter 4, Figures 4–15 through 4–2334, pp. 4–31 to 4–40.

[133] Kleeman, M.K., Ying, Q., and Kaduwela, A., 2005, ''Control strategies for the reduction of airborne particulate nitrate in California's San Joaquin Valley'', Atmospheric Environment, 39: 5325–5341 September 2005. doi: 10.1016/j.atmosenv.2005.05.044. This paper was discussed in our TSD for the 2008 $PM_{2.5}$ Plan, though the 2008 $PM_{2.5}$ Plan did not include the diagrams.

given level of NO_X emissions.[134] The Plan states that the VOC disbenefit occurs because reducing VOCs can reduce the organic nitrate ''sink'' that makes nitrate unavailable, thus freeing it for ammonium nitrate formation.[135]

In sum, the information provided by the State and District in the Plan indicates that: (a) Wintertime levels of secondary organic aerosol measured in the SJV are low and therefore the *direct* products of VOC emissions do not contribute significantly to $PM_{2.5}$ levels above the standard in the SJV; and (b) wintertime reductions in VOC emissions in the SJV, when $PM_{2.5}$ concentrations are high, would not reduce ambient $PM_{2.5}$ levels, and therefore the *indirect* products of VOC emissions also do not contribute significantly to $PM_{2.5}$ levels above the standard in the SJV. Based on this information, we propose to determine that, at this time, VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 $PM_{2.5}$ NAAQS in the SJV nonattainment area.

e. Recommendations for Further Analyses

The EPA believes that several precursor issues warrant further explanation and exploration in future $PM_{2.5}$ plans. For ammonia, an explanation should be provided for the apparent conflict between NO_X as a ''limiting'' precursor for ammonium nitrate formation and modeling that nevertheless shows some benefits from ammonia emission reductions. In the 2012 $PM_{2.5}$ Plan, ammonia reductions for Kern County alone were simulated along with reductions for the area as a whole. Further exploration of the effect of more specific localized controls would inform decisions on whether ammonia controls should be part of the control strategy in the next $PM_{2.5}$ plan.

For VOC, the apparent conflict between different past modeling studies on whether VOC emission reductions are beneficial or not also should be more fully explained. As mentioned above, and discussed further in the EPA's TSD for the 2012 $PM_{2.5}$ Plan,[136] those studies showing a VOC benefit can be discounted on various grounds, but there does not appear to be a full explanation of the chemistry differences seen. Differences between the models used, their chemical mechanisms, their emissions and meteorological inputs, and the episodes they are applied to all cause differences in study results. Without a fuller reconciliation of those results, it is difficult to know whether or not chemistry sensitive to VOC reductions could still be operating today in the SJV. Also mentioned above, the Plan's WOEA asserts that background ozone levels are sufficient to provide the oxidants needed for nitrate formation, even without the VOC-mediated generation of ozone within the SJV.[137] But little support has been provided for this assertion, other than similar assertions in a few journal papers. More concrete evidence on this issue should be provided in future plans.

A related issue is why a VOC disbenefit occurs. One explanation is that VOC can remove nitrate via a ''sink'' reaction to organic nitrates, so reducing VOC frees nitrate to form $PM_{2.5}$. This explanation is provided in a journal paper posing the nitrate sink as a possibility in PM chemistry. While this is plausible, no evidence has been provided from any studies during the ten years since the paper was published that this particular phenomenon is actually occurring in the SJV modeling or atmosphere. Some of these issues may be resolved through better documentation and explanation in the SIP submission of what is already known; others may require quantitative examination of particular chemical pathways in the modeling or ambient measurements.

Evaluation of the available research and its implications for the effectiveness of various precursor emissions controls would also be useful as part of the next plan. This research includes projects funded by the San Joaquin Valley-wide Air Pollution Study Agency, including ''Improve emission estimates for urban ammonia sources,'' ''Update of CRPAQS conceptual model and synthesis of results,'' and ''Develop Improvements to the $PM_{2.5}$ Inventory to Better Reconcile with Ambient Measurements.'' The CARB Staff Report refers to several recent field studies relevant for the SJV, including ARCTAS–CARB, CalNex2010, and DISCOVER–AQ, all of which should be examined for their implications for the SJV's atmospheric chemistry and the effectiveness of various precursor emissions controls.

Some results from the CalNex study are already available in a Synthesis document.[138] While CalNex was conducted during the summer of 2010, some of its findings may be relevant for $PM_{2.5}$ formation in the SJV, even though such formation is greatest in winter. Finding I2b (pp. 63–64) suggests that the SJV ammonia inventory is underestimated by a factor of three; if confirmed, this may have implications for modeling, the effectiveness of ammonia controls, and the amount of NO_X used in the Plan to offset the ammonia inventory increases. Finding I3 (p. 65) highlights ammonia reactions with carboxylic acids and the resulting enhancement of secondary organic aerosol (SOA); the importance of this pathway in modeling winter $PM_{2.5}$ may need to be explored. Several other findings relate to SOA. Finding L2 (p. 75) stated significant SOA formation at night at Bakersfield. Finding N2 (p. 86) stated SOA as 72% of Bakersfield ultra-fine particulate matter (*i.e.,* PM less than 1 micrometer in diameter) (this contrasts with the 5% of $PM_{2.5}$ used in the Plan), and also stated that SOA dominated daytime particle growth. Findings W3a and W3b (p. 129) stated the importance of anthropogenic VOC as the main SOA precursor, and nitrate as a VOC oxidant. While many of these findings may be relevant mostly for summer conditions, their implications for chemical pathways and controls in winter should be examined.

3. Proposed Action

Based on a review of the information provided in the 2015 $PM_{2.5}$ Plan and other information available to the EPA, we propose to determine that at this time VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels which exceed the 1997 annual and 24-hour $PM_{2.5}$ NAAQS in the SJV and, therefore, that VOCs may be excluded from the State's evaluation of potential control measures for purposes of these standards in this area. Consistent with the statutory requirements under subpart 4, all other $PM_{2.5}$ precursors (*i.e.,* NO_X, SO_2, and ammonia) must be included in the State's evaluation of potential control measures for the 1997 $PM_{2.5}$ NAAQS in the SJV area, including nonattainment NSR provisions to

[134] WOEA, upper left quadrant of Figures 19 to 21, pp. A–32 to A–34.

[135] WOEA, pp. A–31, citing. Z. Meng, D. Dabdub, and J. H. Seinfeld, ''Chemical Coupling Between Atmospheric Ozone and Particulate Matter'', Science 277, 116 (1997); DOI: 10.1126/science.277.5322.116. The Meng paper cites the organic nitrate sink as a possibility in PM chemistry. The Plan provides no direct evidence that this reaction is important in the SJV, though it is plausible.

[136] EPA Region 9, ''Technical Support Document, Proposed Action on the San Joaquin Valley 2012 $PM_{2.5}$ State Implementation Plan and 2014 Supplemental Document and Proposed Reclassification of the San Joaquin Valley as Serious Nonattainment for the 2006 $PM_{2.5}$ Standard,'' December 2014.

[137] WOEA, p. A–38.

[138] Synthesis of Policy Relevant Findings from the CalNex 2010 Field Study (California Research at the Nexus of Air Quality and Climate Change): Final Report to the Research Division of the California Air Resources Board, David D. Parrish, NOAA Earth System Research Laboratory, March 27, 2014. Available at *http://www.esrl.noaa.gov/csd/projects/calnex/.*

implement the requirements of subpart 4.[139] We discuss the State's evaluation of potential control measures for NO_X, SO_2, and ammonia, as well as direct $PM_{2.5}$, in section V.D. of this proposed rule.

D. Best Available Control Measures and Most Stringent Measures

As discussed in section IV.B of this proposed rule, section 189(b)(1)(B) of the Act requires for any serious $PM_{2.5}$ nonattainment area that the State submit provisions to assure that the best available control measures (BACM) for reducing emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors will be implemented no later than four years after the date the area is reclassified as a serious area. Because the EPA reclassified the SJV area as Serious nonattainment for the 1997 $PM_{2.5}$ NAAQS effective May 7, 2015, the date four years after reclassification is May 7, 2019. In this case, however, the Serious area attainment date for the SJV area under section 188(c) is no later than December 31, 2015, and to qualify for an extension of this date under section 188(e) the State must, among other things, demonstrate attainment by the most expeditious alternative date practicable. Given these circumstances, we are evaluating the Plan's control strategy for implementation of BACM as expeditiously as practicable.[140]

In addition, before the EPA may extend the attainment date for a Serious nonattainment area under CAA section 188(e), the State must, among other things, demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area (MSM). As discussed above, we have established a process for evaluating BACM in serious area plans and a similar process for evaluating MSM. Because of the substantial overlap in the source categories and controls evaluated for BACM and those evaluated for MSM, we present our evaluation of the 2015 $PM_{2.5}$ Plan's provisions for including MSM alongside our evaluation of the Plan's provisions for implementing BACM for each identified source category. We provide a more detailed evaluation of many of the District's control measures for stationary and area sources in our ''Technical Support Document for the EPA's Evaluation of Fine Particulate Matter Best Available Control Measures and Most Stringent Measures for the San Joaquin Valley Air Pollution Control District,'' January 2016 (''SJV Rules TSD'').

1. Identifying the Sources of $PM_{2.5}$ and $PM_{2.5}$ Precursors

The first step in determining BACM and MSM is to develop a detailed emissions inventory of the sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors that can be used with modeling to determine the effects of these sources on ambient $PM_{2.5}$ levels. The EPA's past guidance on Serious area plans in the Addendum suggested that the second step is to use modeling to identify those source categories that have a greater than *de minimis* impact on ambient $PM_{2.5}$ concentrations.[141]

As discussed in section V.A of this proposed rule, Appendix B of the 2015 $PM_{2.5}$ Plan contains the planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_2, VOC, and ammonia) for the SJV $PM_{2.5}$ nonattainment area together with documentation to support these inventories. The District used available speciation data to identify *de minimis* thresholds, also referred to in the Plan as ''significant emission levels,'' for direct $PM_{2.5}$, NO_X, and SO_X.[142] Based on these thresholds, which are described in Chapter 5 of the Plan, the District identified the following six source categories as emission sources in the SJV that emit pollutants at levels exceeding its selected *de minimis* thresholds (*i.e.,* ''significant'' source categories):

1. Open Burning;
2. Glass Melting Furnaces;
3. Agricultural Conservation Management Practices;
4. Commercial Charbroiling;
5. Wood Burning Fireplaces and Wood Burning Heaters; and
6. Paved and Unpaved Roads.[143]

CARB identified most mobile source categories as ''significant'' and identified only several (*e.g.,* cargo handling equipment, motorcycles, recreational boats, off-road recreational vehicles and commercial harbor craft) as *de minimis* source categories.[144]

Separately in Appendix C and Appendix D of the Plan, however, both CARB and the District identified all of the sources of direct $PM_{2.5}$, NO_X, SO_X and ammonia in the SJV that are subject to State or District emission control measures and provided their evaluations of these regulations for compliance with BACM and MSM requirements. Table 3 identifies the source categories in SJV that are under State and District jurisdiction, each source category's 2012 emissions of direct $PM_{2.5}$, NO_X, and SO_X in tons per day (tpd), and, for each source category, the regulations that the State and District have relied on in the Plan to satisfy BACM and MSM requirements.

TABLE 3—2015 $PM_{2.5}$ PLAN—SOURCE CATEGORIES EVALUATED FOR BACM AND MSM

Source category	Rule No. (if any) *	2012 $PM_{2.5}$ (tpd)	2012 NO_X (tpd)	2012 SO_X (tpd)
Stationary and Area Source Categories under District Jurisdiction				
Open Burning	4103	2.27	1.61	0.05
Reduction of Animal Matter	4104	0.03	0.00	0.00
Prescribed Burning and Hazard Reduction Burning	4106	0.76	0.07	0.03
Particulate Matter Emissions from the Incineration of Combustible Refuse	4203	0.00	0.00	0.00
Cotton Gins	4204	0.22	0.00	0.00
Fuel Burning Equipment	4301	N/A	N/A	N/A

[139] Absent a demonstration to EPA's satisfaction that major stationary sources of ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the NAAQS in the SJV area, under CAA section 189(e) major stationary sources of ammonia are subject to the control requirements that apply to major stationary sources of direct $PM_{2.5}$, including nonattainment NSR requirements. We intend to evaluate the adequacy of the District's nonattainment NSR program for $PM_{2.5}$ upon submission of the NSR SIP revision due May 7, 2016, which is the date 12 months after EPA's reclassification of the SJV as Serious nonattainment for the 1997 $PM_{2.5}$ NAAQS became effective. 80 FR 18528 (April 7, 2015).

[140] CAA section 189(b)(1)(B) establishes an outermost deadline (''no later than four years after the date the area is reclassified'') and does not preclude an earlier implementation deadline for BACM where necessary to satisfy the attainment requirements of the Act.

[141] Addendum at 42012.

[142] 2015 $PM_{2.5}$ Plan, Chapter 5, section 5.4 (''De Minimis Thresholds for Determining Significant Source Categories'').

[143] *Id.* at Table 5–2 (''Valley Source Category De Minimis Determinations (using 2012 data)'').

[144] 2015 $PM_{2.5}$ Plan at Appendix D.

TABLE 3—2015 $PM_{2.5}$ PLAN—SOURCE CATEGORIES EVALUATED FOR BACM AND MSM—Continued

Source category	Rule No. (if any) *	2012 $PM_{2.5}$ (tpd)	2012 NO_X (tpd)	2012 SO_X (tpd)
Boilers, Steam Generators, and Process Heaters Greater than 5.0 MMBtu/hr	4306/4320	1.27	1.93	0.60
Boilers, Steam Generators, and Process Heaters—2.0 to 5.0 MMBtu	4307	0.32	0.49	0.15
Boilers, Steam Generators, and Process Heaters—0.075 to less than 2.0 MMBtu	4308	0.61	0.92	0.28
Dryers, Dehydrators, and Ovens	4309	0.85	0.20	0.47
Flares	4311	0.16	0.56	0.33
Lime Kilns	4313	0.00	0.00	0.00
Solid Fuel Fired Boilers, Steam Generators, and Process Heaters	4352	0.62	2.69	0.56
Glass Melting Furnaces	4354	0.33	6.04	1.96
Conservation Management Practices	4550			
• Tilling Dust	.....	5.17	0.00	0.00
• Harvest Operations Dust	.....	7.28	0.00	0.00
• Dust from Ag Lands (non-pasture)	.....	6.15	0.00	0.00
• Dust from Pasture Lands	.....	1.09	0.00	0.00
Commercial Charbroiling	4692	2.84	0.00	0.00
Internal Combustion Engines	4702	0.49	13.06	0.12
Stationary Gas Turbines	4703	1.22	3.09	0.22
Sulfuric Acid Mist	4802	0.00	0.00	0.75
Wood Burning Fireplaces and Wood Burning Heaters	4901	4.48	0.50	0.08
Residential Water Heaters	4902	0.21	2.21	0.06
Natural Gas-Fired, Fan-Type Central Furnaces	4905	0.20	2.46	0.06
General Requirements	8011	N/A	N/A	N/A
Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities	8021	1.46	0.00	0.00
Bulk Materials	8031	0.04	0.00	0.00
Carryout and Trackout (emission included in Paved and Unpaved Roads, Rule 8061, below)	8041	N/A	N/A	N/A
Open Areas	8051	0.34	0.00	0.00
Paved and Unpaved Roads	8061	7.59	0.00	0.00
Unpaved Vehicle/Equipment Traffic Areas	8071	0.59	0.00	0.00
Agricultural Sources	8081	1.21	0.00	0.00
Lawn and Garden Equipment	SC 001	0.04	0.58	0.00
Energy Efficiency	SC 002	N/A	N/A	N/A
Fireworks	SC 003	N/A	N/A	N/A
Sand and Gravel Operations	SC 004	0.09	0.00	0.00
Asphalt/Concrete Operations (Mineral Processes)	SC 005	0.82	0.20	0.36
Almond Hulling/Shelling Operations	SC 006	0.38	0.00	0.00
Pistachio Hulling/Shelling Operations (emissions included in Almond Hulling/Shelling above)	SC 007	N/A	N/A	N/A
Agricultural Material Screening/Shaking Operations (emissions included in other control categories)	SC 008	N/A	N/A	N/A
Tub Grinding (emissions included in IC engines, Rule 4702, fugitive emissions accounted for in stationary and area inventory)	SC 009	N/A	N/A	N/A
Abrasive Blasting	SC 010	0.33	0.00	0.00
Mobile Source Categories under State Jurisdiction				
Light- and Medium-Duty Vehicles	(**)	1.9	32.2	(***)
Heavy-Duty Vehicles	(**)	4.8	138.6	(***)
Off-Road Vehicles and Engines (excludes Cargo Handling Equipment)	(**)	1.1	19.2	(***)
Farm Equipment	(**)	2.9	50.4	(***)
Cargo Handling Equipment	(**)	0.0	0.1	(***)
Other Mobile Sources	(**)	.....	.....	(***)
• Motorcycles	.....	0.0	1.0	
• Recreational Boats	.....	0.4	1.6	
• Off-Road Recreational Vehicles	.....	0.0	0.1	
• Commercial Harbor Craft	.....	0.0	0.7	

Source: 2015 $PM_{2.5}$ Plan, Chapter 5, Table 5–2; Appendix C ("BACM and MSM for Stationary Sources"); and Appendix D ("BACM and MSM for Mobile Sources"), except as otherwise noted.

* "SC" refers to a source category that is subject to either several District rules or none.

** *See* 2015 $PM_{2.5}$ Plan, Appendix D for a discussion of the State measures that cover these mobile source categories.

*** *See* 2015 $PM_{2.5}$ Plan, Appendix B (Emissions Inventory) for SO_X emission levels.

With respect to ammonia, the District states in Appendix C of the 2015 $PM_{2.5}$ Plan that ammonia is an "insignificant" $PM_{2.5}$ precursor in the SJV but also provides an analysis of several SIP-approved District regulations that control ammonia emissions.[145] We provide our evaluation of these regulations below and further in the EPA's SJV Rules TSD.

Because the State and District have evaluated a much larger set of emission sources than those identified as "significant" sources in the Plan, and because the District's evaluation of *de minimis* thresholds entirely excludes consideration of ammonia emission

[145] 2015 $PM_{2.5}$ Plan, Appendix C, at pp. C–239 to C–280.

sources, the EPA is not proposing any action with respect to the District's selected *de minimis* thresholds for BACM and MSM purposes. Instead, based on the Plan's more comprehensive evaluation of State and District regulations that apply to stationary, area, and mobile sources of direct $PM_{2.5}$, NO_X, SO_X and ammonia in the SJV, we propose to find that the 2015 $PM_{2.5}$ Plan appropriately identifies all emission sources and source categories that must be subject to evaluation for potential control measures consistent with the requirements of subpart 4.

2. Identification and Implementation of BACM and MSM

As part of its process for identifying candidate BACM and MSM and considering the technical and economic feasibility of additional control measures, CARB and the District reviewed the EPA's guidance documents on BACM, guidance documents on control measures for direct $PM_{2.5}$, NO_X, and SO_X emission sources, and control measures implemented in other ozone and $PM_{2.5}$ nonattainment areas in California and other states. The State's and District's evaluations of potential BACM and MSM for each source category identified in Table 3 above is found in Appendix C and Appendix D of the 2015 $PM_{2.5}$ Plan. In the following sections, we review key components of the State's and District's demonstrations concerning BACM and MSM for sources of direct $PM_{2.5}$, NO_X, SO_X and ammonia emissions in the SJV. We provide a more detailed evaluation of the District's regulations in the EPA's SJV Rules TSD, together with recommendations for improvements to these rules.

Based on our evaluation of these State and District demonstrations, we propose to determine that the 2015 $PM_{2.5}$ Plan provides for the implementation of BACM and MSM for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors as expeditiously as practicable, in accordance with the requirements of CAA sections 189(b)(1)(B) and 188(e).

a. District Measures for Stationary and Area Sources

The District's BACM and MSM process is described in the 2015 $PM_{2.5}$ Plan, Chapter 5, section 5.3 (''BACM/MSM Evaluation Process'') and in Appendix C. The District followed a process similar to that used by Arizona in the Maricopa County PM_{10} Serious Area Plan, the only other air quality plan in the nation that includes a BACM and MSM demonstration for purposes of requesting an attainment date extension under CAA section 188(e).[146]

For each identified source category, the District first identified potential control measures included in SIPs for other areas, addressed in federal regulations or guidance (*e.g.,* control technique guidelines (CTGs), alternative control techniques (ACTs), or new source performance standards (NSPSs)), or addressed in state or local regulations or guidance (*e.g.,* Air Toxic Control Measures (ATCMs).[147] The District evaluated these identified potential control measures to determine whether implementation of the measures would be technologically and economically feasible in the SJV.[148] In addition, the District considered other available control options (beyond those included in other SIPs or identified in federal/state regulations or guidance), such as measures that the State or District have previously considered ''beyond RACT'' and measures that have been implemented in practice in other areas. The District also evaluated these potential control measures to determine whether their implementation would be technologically and economically feasible in the SJV. The EPA's SJV Rules TSD provides a more detailed evaluation of many of these District regulations and our recommendations for rule improvements.

Open Burning

SJVUAPCD Rule 4103 (''Open Burning''), as amended April 15, 2010, is designed to minimize impacts of smoke and other air pollutants from open burning of agricultural waste and other materials.[149] The rule restricts the type of materials that may be burned and establishes other conditions and procedures for open burning in conjunction with the District's Smoke Management Program.[150] The EPA approved this rule into the California SIP on January 4, 2012.[151]

The District compared Rule 4103 to several other open burning rules implemented in other parts of California and found no other rules more stringent as a whole than those in Rule 4103. According to the District, although the South Coast Air Quality Management District (SCAQMD) implements a rule that restricts burning on residential wood combustion (RWC) curtailment days (Rule 444) and District Rule 4103 does not contain the same restriction, in practice the District currently bans all burning on RWC curtailment days through implementation of its Smoke Management Program, which specifically allocates allowable burn acreage for 103 geographic zones based on local meteorology.[152] We note that a restriction on burning on RWC curtailment days by itself may not consistently reduce wintertime $PM_{2.5}$ emission levels as it could shift more waste burning activity to days with more favorable meteorology.

Sections 41855.5 and 41855.6 of the California Health and Safety Code require the District to prohibit open burning of specific crop categories unless the District determines either that there is no economically feasible alternative means of eliminating the waste or that there is no long-term federal or state funding commitment for the continued operation of biomass facilities in the SJV or for the development of alternatives to burning.[153] The District has considered the technical and economic feasibility of alternatives to burning several times in the last several years and concluded that such alternatives are not feasible for selected crop categories at this time.[154]

Boilers, Steam Generators, and Process Heaters Greater Than 5.0 MMBtu/hr

SJVUAPCD Rule 4306 (''Boilers, Steam Generators, and Process Heaters—Phase 3''), as amended October 16, 2008, establishes NO_X emission limits ranging from 5 to 30 ppm and related operational requirements for gaseous fuel- or liquid fuel-fired boilers, steam generators, and process heaters with total rated heat input greater than 5 million Btu per hour (MMBtu/hr).[155] The EPA approved Rule 4306 into the California SIP on January 13, 2010.[156] SJVUAPCD Rule 4320 (''Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater Than 5.0 MMBtu/hr''), as adopted October 16, 2008, establishes more stringent NO_X emission limits (5 to 12 ppm) and

[146] 65 FR 19964 (April 13, 2000) (proposed action on Maricopa County Serious Area Plan); 66 FR 50252 (October 2, 2001) (proposed action on Maricopa County Serious Area Plan); and 67 FR 48718 (July 25, 2002) (final action on Maricopa County Serious Area Plan).

[147] 2015 $PM_{2.5}$ Plan, Chapter 5; and Appendix C, pp. C–4 to C–6.

[148] *Id.*

[149] *See generally* SJVUAPCD Rule 4103, as amended April 15, 2010; *see also* 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–14 to C–15.

[150] *Id.*

[151] 77 FR 214 (January 4, 2012).

[152] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–8 to C–10.

[153] California Health & Safety Code, sections 41855.5 and 41855.6.

[154] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–8 to C–15.

[155] *See generally* SJVUAPCD Rule 4306, as amended October 16, 2008; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, p. C–35.

[156] 75 FR 1715 (January 13, 2010).

related operational requirements for these units but allows sources to pay an emission fee in lieu of compliance with the NO_X emission limits.[157] The EPA approved Rule 4320 into the California SIP on March 25, 2011 but determined that this rule, as approved, may not be credited for attainment planning purposes because the fee provision renders the NO_X emission limits unenforceable.[158]

The District compared both Rule 4306 and Rule 4320 to several other analogous rules implemented in other parts of California, including the Sacramento metropolitan area, the South Coast, and the Bay Area.[159] According to the District, the NO_X emission limits in Rule 4306 are generally within the same range as, and in some cases are more stringent than, those contained in analogous rules implemented by these other California agencies, except that the SCAQMD implements a rule containing NO_X emission limits that are potentially more stringent for units of certain sizes (SCAQMD Rule 1146, as amended November 1, 2013).[160]

SCAQMD Rule 1146 establishes a 5 ppm NO_X emission limit for larger units (*i.e.,* those with heated rate inputs above 75 MMBtu/hr), whereas Rule 4320 establishes a 7 ppm limit and Rule 4306 establishes a 9 ppm limit for such units.[161] SCAQMD Regulation XX (''Regional Clean Air Incentives Market'' or ''RECLAIM'') also applies to units within the same range of sizes as Rule 4320 but allows sources to comply with emission caps by purchasing RECLAIM Trading Credits.[162] We do not have information about the rated heat input of the units subject to RECLAIM in the South Coast area and therefore cannot conclude that the lower NO_X emission limits for larger boilers in SCAQMD Rule 1146 are technically and economically feasible for implementation in the SJV at this time.

The District also considered the technical and economic feasibility of alternative NO_X and $PM_{2.5}$ control techniques for this source category, such as low temperature oxidation and EM_X system for NO_X control, and alternative fuels, electrostatic precipitators (ESP) and wet scrubbers for direct $PM_{2.5}$ control.[163] Based on its consideration of the technical constraints and costs associated with each of these control options, the District concluded that these additional controls are not feasible for implementation in the SJV at this time.[164]

Although the NO_X emission limits in Rule 4320 do not satisfy the Act's enforceability requirements because of the option to pay an emission fee, we note that the requirement to pay the emission fee itself is an enforceable requirement and that the fee provision appears to function effectively as a pollution deterrent.[165]

Flares

SJVUAPCD Rule 4311 (''Flares''), as amended June 18, 2009, establishes specific operational and administrative requirements to limit emissions of NO_X, SO_X, and VOCs from the operation of flares.[166] Under Rule 4311, for each refinery flare and other flare with a capacity above 5 MMBtu/hr, the operator must submit a flare minimization plan (FMP) to the District describing relevant equipment and preventative measures and demonstrating that the operator appropriately minimized flaring activity.[167] The EPA approved Rule 4311 into the California SIP on November 3, 2011.[168]

The District compared Rule 4311 with several other analogous rules implemented in other parts of California, including the South Coast, Bay Area, Ventura County, and Santa Barbara, all of which require regulated sources to submit FMPs to the local districts.[169] According to the District, most flares in the SJV occur in the oil and gas production industry and operate as emergency control devices, unlike many flares in the South Coast area and the Bay Area, which are significantly larger and operate as part of the refinery process.[170] Because of wide variation in flaring operations in the SJV, the District concludes that requirements to submit details FMPs, as in Rule 4311, are the most effective means of reducing NO_X and SO_X emissions from flaring.[171]

The District also considered the technical and economic feasibility of alternative control techniques for flares, such as maximum monthly flared gas targets and requirements to capture gas before it is flared.[172] Based on its consideration of the technical constraints and costs associated with these control options, the District concluded that these additional controls are not feasible for implementation in the SJV at this time.[173]

Chapter 8 of the 2015 $PM_{2.5}$ Plan includes a commitment by the District to conduct a comprehensive review of submitted FMPs to identify effective flare minimization practices; to evaluate the technical and economic feasibility of implementing new and additional flare minimization practices at affected facilities; to have a draft report available for public review and comment by December 1, 2015; to develop a final report by March 31, 2016 after addressing public comments on these evaluations; and upon completion of these analyses, to work closely with affected operators to ''evaluate and implement, when feasible, the most effective flare minimization practices through the FMP submittal and approval process under Rule 4311.'' [174] The District issued its draft report of FMPs on December 3, 2015, starting a 30-day public comment period.[175]

Solid Fuel-Fired Boilers

SJVUAPCD Rule 4352 (''Solid Fuel-Fired Boilers, Steam Generators, and Process Heaters''), as amended December 15, 2011, establishes NO_X emission limits and related operational requirements for boilers, steam generators, and process heaters that burn municipal solid waste (MSW), biomass, and other solid fuels.[176] Specifically, the rule establishes NO_X emission limits of 165 ppmv for units burning MSW, 90 ppmv for units burning biomass, and 65 ppmv for units burning other solid fuels.[177] The EPA approved this rule into the California SIP on November 6, 2012.[178]

According to the District, the NO_X emission limits in Rule 4352 have been lowered significantly over time and are

[157] *See generally* SJVUAPCD Rule 4320, as adopted October 16, 2008; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, p. C–35.

[158] 76 FR 16696 (March 25, 2011).

[159] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–38.

[160] *Id.*

[161] *Compare* SCAQMD Rule 1146 (as amended November 1, 2013) at section (c)(1)(F) to SJVUAPCD Rule 4320 at Table 1, category B.a and SJVUAPCD Rule 4306 at Table 1, category B; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, p. C–38.

[162] RECLAIM is a market incentive program designed to allow facilities flexibility in achieving emission reduction requirements for NO_X and SO_X through, among other things, add-on controls, equipment modifications, reformulated products, operational changes, shutdowns, and the purchase of excess emission reductions. *See* SCAQMD Rule 2000, section (a).

[163] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–39.

[164] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–42.

[165] *See* section 3.b.5 of the EPA's SJV Rules TSD.

[166] *See generally* SJVUAPCD Rule 4311, as amended June 18, 2009; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, p. C–63.

[167] *Id.*

[168] 76 FR 68106 (November 3, 2011).

[169] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–73.

[170] *Id.*

[171] *Id.*

[172] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–82.

[173] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–84.

[174] *Id.* at Chapter 8, Section 8.1 (pg. 8–2).

[175] SJVUAPCD, ''Draft Further Study, Rule 4311 Flare Minimization Plans, 2015,'' December 3, 2015.

[176] *See generally* SJVUAPCD Rule 4352, as amended December 15, 2011; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, p. C–87.

[177] *Id.*

[178] 77 FR 66548 (November 6, 2012).

at least as stringent as analogous requirements implemented in other parts of California. The District compared the provisions of Rule 4352 to potentially more stringent requirements implemented in Sacramento County, the South Coast area, and the Bay Area, but these comparisons are of limited value because no affected facilities are subject to the Sacramento Metropolitan Air Quality Management District's (SMAQMD) rule, and no sources are currently complying with the 40 ppmv limit in the SCAQMD's or Bay Area Air Quality Management District's (BAAQMD's) rules.[179] Nonetheless, we note that three other air districts in California implement regulations that apply to active biomass-fueled units: Yolo-Solano Air Quality Management District (YSAQMD), El Dorado County Air Quality Management District (EDAQMD) and Placer County Air Pollution Control District (PCAPCD). The NO_X emission limits in these regulations are all within the same range as SJVAPCD's limit of 90 ppm corrected to 3% O_2 on a 24-hour block average.[180]

The District also considered the technical and economic feasibility of alternative control techniques for this source category, such as selective catalytic reduction (SCR) for NO_X control and ESPs or baghouses for direct $PM_{2.5}$ control.[181] Based on its consideration of the costs associated with SCR retrofits at units burning biomass, MSW, or other solid fuels, the District concluded that SCR for these units is not economically feasible for sources in the SJV at this time.[182] With respect to direct $PM_{2.5}$ control, the District states that sources subject to Rule 4352 are subject to permit limits that require the best feasible controls.[183]

We note that biomass- and MSW-fired units provide an environmental benefit by diverting these wastes from landfills and reducing open burning.

Glass Melting Furnaces

SJVUAPCD Rule 4354 (''Glass Melting Furnaces''), as amended May 19, 2011, establishes NO_X, VOC, SO_X, and PM_{10} emission limits and related operational requirements for glass melting furnaces.[184] Specifically, the rule establishes NO_X emission limits of 1.5 to 3.7 lb. NO_X/ton glass, depending on glass product and averaging time, and SO_X emission limits of 0.9 to 1.7 lb. SO_X/ton glass.[185] The EPA approved Rule 4354 into the California SIP on January 31, 2013.[186]

According to the District, the NO_X emission limits in Rule 4354 require implementation of oxy-fuel firing or SCR systems, which are the best available NO_X control techniques, and are at least as stringent as analogous requirements implemented in the South Coast and Bay Area.[187]

We are not aware of prohibitory rules for glass melting furnaces in other areas that are more stringent than Rule 4354. We note that the SCAQMD has found a 1.2 lb./ton NO_X emission limit feasible through a Best Available Retrofit Control Technology (BARCT) determination under its RECLAIM program, but absent information about how affected sources in the South Coast area have complied with the available compliance options under RECLAIM, it is not clear that these lower NO_X emission levels are technically and economically feasible for implementation in the SJV.

Conservation Management Practices

SJVUAPCD Rule 4550 (''Conservation Management Practices''), as adopted August 19, 2004, establishes requirements for owners and operators of agricultural sites to implement conservation management practices (CMPs) to control PM_{10} emissions from on-field crop and animal feeding operations.[188] Under the rule, each owner/operator of an agricultural site must select and implement a CMP for each category of operations, including unpaved roads and unpaved vehicle/equipment traffic areas, and submit a CMP application to the District for its review and approval.[189] The EPA approved this rule into the California SIP on February 14, 2006.[190]

According to the District, Rule 4550 is the most stringent rule of its kind.[191] The District compared the provisions of Rule 4550 to analogous requirements implemented by air agencies in other parts of California (Imperial County, South Coast, and Sacramento County) and in Arizona, and found no requirements more stringent than those in Rule 4550.[192] We note that it is difficult to directly compare the requirements among these rules because of the widely varying rule structures and operations of the affected agricultural sites.

The District also considered the technical and economic feasibility of additional control options for this source category, such as misting to reduce PM_{10} emissions from disking activity and the use of new almond harvesting equipment.[193] As to misting, the District found that the available information was not sufficient to demonstrate that this control technique would achieve its minimum standard of a 10% reduction in PM_{10} emissions, so the District did not add this measure to the CMP list.[194] As to the use of newer almond harvesting equipment, the District noted, based on a 2010–2011 study, that newer equipment would achieve significant PM_{10} emission reductions but found it was not necessary to revise the CMP list given use of newer almond harvesting equipment is already listed under an existing CMP category.[195] Finally, the District considered adding windblown dust controls to Rule 4550 but determined that such controls would not substantially impact $PM_{2.5}$ design values in the SJV because windblown dust events typically occur during the spring and fall seasons whereas the District asserts that $PM_{2.5}$ values are driven by winter-time concentrations; $PM_{2.5}$ values recorded during winter stagnation periods are usually much higher than those recorded during wind events; and the geologic component of peak $PM_{2.5}$ concentration is a fraction of the mass formed by secondary processes and other sources.[196]

Chapter 8 of the 2015 $PM_{2.5}$ Plan includes a commitment by the District to reevaluate Rule 4550, in close coordination with stakeholders (including agricultural industry representatives, CARB, and the EPA), for additional feasible control options; to have a draft report available for public review and comment by May 31, 2016; and to develop a final report by October 15, 2016 after addressing public comments on these evaluations.[197]

Commercial Charbroiling

SJVUAPCD Rule 4692 (''Commercial Charbroiling''), as amended September 17, 2009, establishes control

[179] 2015 $PM_{2.5}$ Plan, Appendix C at p. C–89.

[180] SJV Rules TSD at Section 3.d.2. *See also* 77 FR 66548 (November 6, 2012).

[181] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–91 to C–101.

[182] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–95—C–96 and C–98.

[183] *Id.*

[184] *See generally* SJVUAPCD Rule 4354, as amended May 19, 2011; *see also* 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–102.

[185] SJVUAPCD Rule 4354, as amended May 19, 2011, at pp. 5 and 7.

[186] 78 FR 6740 (January 31, 2013).

[187] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–102.

[188] *See generally* SJVUAPCD Rule 4550, as adopted August 19, 2004; *see also* 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–106.

[189] *Id.*

[190] 71 FR 7683 (February 14, 2006).

[191] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–114.

[192] *Id.*

[193] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–111.

[194] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–112.

[195] *Id.*

[196] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–110.

[197] *Id.* at Chapter 8, Section 8.3 (pg. 8–3).

requirements to reduce PM_{10} (of which $PM_{2.5}$ is a component) and VOC emissions from chain-driven charbroilers.[198] Specifically, the rule requires that chain-driven charbroilers be equipped and operated with a catalytic oxidizer with a control efficiency of at least 83% for PM_{10} emissions and 86% for VOC emissions.[199] The EPA approved Rule 4692 into the California SIP on November 3, 2011.[200]

The District compared the requirements in Rule 4692 to analogous requirements for chain-driven charbroilers implemented by the SCAQMD, Ventura County Air Pollution Control District (VCAPCD), and BAAQMD and found no requirements in these rules more stringent than those contained in Rule 4692, with one exception in the BAAQMD rule.[201] With respect to under-fired charbroilers (UFCs), the District found that no cost-effective control techniques have been demonstrated to date given technical challenges associated with controlling emissions from UFCs, which operate differently from chain-driven charbroilers.[202] Although the BAAQMD has adopted a rule that establishes control requirements for both chain-driven and under-fired charbroilers, according to the District, a significant portion of the UFCs in the BAAQMD are not subject to the rule's requirements for UFCs because they fall below the rule's applicability thresholds.[203] The District also stated that the BAAQMD has been unable to enforce its UFC requirements because no control technologies have been certified.[204]

The District also considered the technical and economic feasibility of alternative control techniques for UFCs, such as catalytic oxidizers, high efficiency particulate-arresting filtration system, ESPs, and wet scrubbers.[205] Based on its consideration of the technical difficulties and costs associated with installing these control devices at UFCs, the District concluded that these control techniques are not technically and economically feasible for sources in the SJV at this time.[206] The District also stated, however, that it expects to begin testing some of these additional control options in mid-2015. The District's Governing Board approved $750,000 for its Restaurant Charbroiler Technology Partnership program, which would fund particulate emission control technology demonstration projects for under-fired charbroilers at restaurants in the SJV.[207]

As part of the 2015 $PM_{2.5}$ Plan, the SJVUAPCD submitted a commitment to amend Rule 4692 in 2016 to add requirements for UFCs, with an anticipated compliance date of 2017.[208] The Plan relies on this commitment for a portion of the direct $PM_{2.5}$ emission reductions needed to attain the 1997 $PM_{2.5}$ NAAQS.[209]

Internal Combustion Engines

SJVUAPCD Rule 4702 (''Internal Combustion Engines''), as amended November 14, 2013, establishes NO_X, CO, VOC, and SO_X emission limits and related operational requirements for internal combustion (IC) engines.[210] The rule contains separate emission limits for spark-ignited IC engines used in agricultural operations (SI AO engines), spark-ignited IC engines used in non-agricultural operations (SI non-AO engines), and compression-ignited IC engines.[211] The EPA proposed to approve this rule into the California SIP on December 2, 2015.[212] The EPA approved a previous version of this rule into the California SIP on January 10, 2008.[213]

For SI non-AO engines, Rule 4702 establishes NO_X emission limits ranging from 25 to 75 ppmv.[214] According to the District, these NO_X emission limits are at least as stringent as many analogous control requirements implemented in the Bay Area, Sacramento Metro, and Ventura County areas.[215] We also note that Rule 4702 limits are at least as stringent as analogous requirements in the Feather River, Placer County, Mojave Desert, and San Diego areas.[216]

Some of the emission limits for SI non-AO engines in Rule 4702 are, however, less stringent than those implemented in the South Coast, El Dorado, and Antelope Valley areas for similar engines. Specifically, the SCAQMD has adopted an 11 ppmv limit for all IC engines; [217] El Dorado has adopted a 25 ppmv limit for SI ''rich-burn'' engines and a 65 ppmv limit for SI ''lean-burn'' engines (except those used exclusively in agricultural operations); [218] and Antelope Valley has adopted a 36 ppmv limit for IC engines (except those used exclusively in agricultural operations).[219] The District considered the technical and economic feasibility of alternative control techniques for SI non-AO engines that would lower the emission levels for certain engines to 11, 25, and 65 ppmv, but found that for reasons of both technical and economic feasibility, NO_X emission limits lower than those in Rule 4702 are generally not feasible for implementation in the SJV at this time.[220]

For SI AO engines, Rule 4702 establishes NO_X emission limits ranging from 90 to 150 ppmv.[221] These NO_X emission limits are more stringent than analogous control requirements implemented in the Sacramento Metro, Placer County, El Dorado, and Antelope Valley areas, which exempt AO engines from control requirements altogether, and are equivalent to analogous control requirements implemented in the Mojave Desert area.[222] The SCAQMD, however, has adopted an 11 ppmv limit for all IC engines,[223] and the BAAQMD has adopted NO_X emission limits ranging from 25–70 ppmv for all spark-ignited IC engines.[224] Thus, Rule 4702's

[198] *See generally* SJVUAPCD Rule 4692, as amended September 17, 2009; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, p. C–115.

[199] *Id.*

[200] 76 FR 68103 (November 3, 2011).

[201] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–116 to C–117.

[202] *Id.*

[203] *Id.*

[204] *Id.* at p. C–116.

[205] *Id.* at pp. C–117, C–118.

[206] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–117 to C–119.

[207] SJVUAPCD Governing Board, Meeting Minutes of June 18, 2015 Governing Board Meeting, pp. 7–8.

[208] 2015 $PM_{2.5}$ Plan, Appendix C at p. C–119 and SJVUAPCD Governing Board Resolution 15–4–7A (April 16, 2015) at paragraph 7.

[209] 2015 $PM_{2.5}$ Plan, CARB Staff Report, p. 9. *See also* 2015 $PM_{2.5}$ Plan, Chapter 7, section 7.1.2, p. 7–6, and Appendix C, section C.16, pp. C–115 to C–119, which describe the charbroiling rule revision commitment in the context of the 2015 $PM_{2.5}$ Plan.

[210] *See generally* SJVUAPCD Rule 4702, as amended November 14, 2013; *see also* 2015 $PM_{2.5}$ Plan, Appendix C at p. C–120.

[211] *Id.*

[212] 80 FR 75442 (December 2, 2015).

[213] 73 FR 1819 (January 10, 2008).

[214] SJVUAPCD Rule 4702, as amended November 14, 2013, at Table 1.

[215] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–122 to C–123.

[216] Feather River AQMD Rule 3.22; Placer County APCD Rule 242; Mojave Desert AQMD Rule 1160; and San Diego APCD Rule 69.4.1.

[217] SCAQMD Rule 1110.2, as amended February 1, 2008.

[218] El Dorado County AQMD Rule 233, as amended June 2, 2006.

[219] Antelope Valley AQMD Rule 1110.2, as amended January 21, 2003.

[220] *See* section 3.h (Internal Combustion Engines) of the EPA's SJV Rules TSD, which provides a more detailed discussion of the District's technical and economic feasibility analyses.

[221] SJVUAPCD Rule 4702, as amended November 14, 2013, at Table 3.

[222] SMAQMD Rule 412, as amended June 1, 1995; Placer County APCD Rule 242, as adopted April 10, 2003; El Dorado County AQMD Rule 233, as amended June 2, 2006; Antelope Valley AQMD Rule 1110.2, as amended January 21, 2003; and Mojave Desert AQMD Rule 1160.1, as adopted January 23, 2012.

[223] SCAQMD Rule 1110.2, as amended February 1, 2008.

[224] Bay Area AQMD Regulation 9, Rule 8, as amended July 25, 2007.

requirements for SI AO engines are at least as stringent as most but not all analogous requirements implemented in other parts of California.

The District considered the technical and economic feasibility of alternative control techniques for SI AO engines that would lower their emission levels and found that for reasons of both technical and economic feasibility, NO_X emission limits lower than those in Rule 4702 are generally not feasible for implementation within SJV's agricultural industry at this time.[225] We note that the SCAQMD, like SJVUAPCD, has provided economic incentive grants for agricultural engine retrofits and replacement in recognition of unique economic and technical circumstances in the agricultural industry.[226]

Finally, for compression-ignited IC engines (both those used in agricultural operations and those used in non-agricultural operations), Rule 4702 requires that all certified engines meet the EPA's Tier 3 and Tier 4 emission standards for nonroad diesel engines and that non-certified engines meet the same standards or a numerical NO_X emission limit based on engine size.[227]

Stationary Gas Turbines

SJVUAPCD Rule 4703 (''Stationary Gas Turbines''), as amended September 20, 2007, establishes NO_X emission limits ranging from 5 to 25 ppm and related operational requirements for all stationary gas turbines with greater than 0.3 MW capacity.[228] These units operate primarily in the oil and gas production and utility industries, with some also operating in manufacturing and government facilities.[229] The EPA approved this rule into the California SIP on October 21, 2009.[230]

According to the District, the NO_X emission limits in Rule 4703 are more stringent than analogous control requirements implemented in many other parts of California, including the Sacramento Metro area, South Coast, and Ventura County.[231] The District considered the technical and economic feasibility of alternative control techniques to reduce emissions further, such as the installation of SCR or installation of entirely new turbine systems, and concluded that these options are extremely expensive and not economically feasible.[232] The District also considered the potential for installation of EMx system for NO_X control and concluded that this technology requires further testing before it will be generally available for implementation in the SJV.[233]

Wood Burning Fireplaces and Wood Burning Heaters

SJVUAPCD Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters''), as amended September 18, 2014, is designed to limit emissions of PM, including $PM_{2.5}$ and PM_{10}, and other pollutants generated by the use of wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and on the advertising of wood for sale within the SJV.[234] The EPA proposed to approve this rule into the SIP on September 30, 2015.[235]

Rule 4901 includes a mandatory two-tiered curtailment program. During a Level One Episodic Wood Burning Curtailment, which is declared when the $PM_{2.5}$ concentration is forecasted to be between 20–65 $\mu g/m^3$, operation of wood burning fireplaces and unregistered wood burning heaters is prohibited, but properly operated wood burning heaters that meet certification requirements and have a current registration with the District may be used. During a Level Two Episodic Wood Burning Curtailment, which is declared when the $PM_{2.5}$ concentration is forecasted to be above 65 $\mu g/m^3$ or the PM_{10} concentration is forecasted to be above 135 µg/m3, operation of any wood burning device is prohibited.[236]

According to SJVAPCD, Rule 4901 is at least as stringent as analogous rules in other areas, including the South Coast, Bay Area, Sacramento Metro area, Washoe County, Nevada, and Washington State.[237] We note that SCAQMD Rule 445 includes a mandatory curtailment of all devices when the 24-hour average $PM_{2.5}$ concentration is forecasted above 30 $\mu g/m^3$, and SMAQMD Rule 421 bans operation of all wood burning devices when ambient $PM_{2.5}$ concentrations are above 35 $\mu g/m^3$. According to the District, however, the small increase in emissions from registered clean burning devices when concentrations are between 20–65 $\mu g/m^3$ in the SJV will be more than offset by the decrease in emissions from dirty devices when concentrations are between 20–30 $\mu g/m^3$, which will reduce the build-up of emissions during long periods of stagnation experienced in the wintertime in the Valley.[238]

Rule 4901 incorporates all elements outlined in the EPA's *Strategies for Reducing Wood Smoke*[239] and includes comparable provisions available in other analogous rules. We are not aware of more stringent measures for reducing residential wood smoke that are technically and economically feasible for implementation in the SJV. Our Technical Support Document to support our separate proposal on Rule 4901 contains a more detailed discussion of this rule in comparison to analogous rules implemented elsewhere.[240]

Paved and Unpaved Roads

SJVUAPCD Rule 8061 (''Paved and Unpaved Roads''), as amended August 19, 2004, is designed to limit fugitive dust emissions generated from paved and unpaved roads. The rule establishes control measures and design criteria for existing public and private paved or unpaved roads, road construction projects, and road modification projects, such as requirements to stabilize unpaved roads by applying water, a uniform layer of washed gravel, chemical/organic dust stabilizers/suppressants, paving, or any other method demonstrated to effectively limit visible dust to 20% opacity.[241] The EPA approved this rule into the SIP on February 17, 2006.[242]

The District compared Rule 8061 to SCAQMD Rule 1156 (''Further Reductions of Particulate Emissions from Cement Manufacturing Facilities''); SCAQMD Rule 1157 (''PM–10 Emission Reductions from Aggregate and Related Operations''); SMAQMD Rule 403 (''Fugitive Dust''); VCAPCD Rule 55 (''Fugitive Dust''); Clark County

[225] *See* section 3.h (Internal Combustion Engines) of the EPA's SJV Rules TSD.

[226] SCAQMD Final Staff Report for Rule 1110.2, May 2005, Appendix B: Incentive Funding Available for Agricultural Engine Emission Reductions.

[227] SJVUAPCD Rule 4702, as amended November 14, 2013, at Table 4.

[228] SJVUAPCD Rule 4703, as amended September 20, 2007, at Table 5–3.

[229] 2015 $PM_{2.5}$ Plan, Appendix C at p. C–142.

[230] 74 FR 53888 (October 21, 2009).

[231] 2015 $PM_{2.5}$ Plan, Appendix C at p. C–144.

[232] *Id.*

[233] *Id.*

[234] *See generally* SJVUAPCD Rule 4901, as amended September 18, 2014.

[235] 80 FR 58637 (September 30, 2015). Also, EPA approved a previous version of Rule 4901, as adopted October 16, 2008, into the SIP on November 10, 2009 (74 FR 57907).

[236] SJVUAPCD Rule 4901, as amended September 18, 2014, at paragraph 5.6.

[237] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–156.

[238] Rule 4901 Staff Report, p. 19.

[239] ''Strategies for Reducing Residential Wood Smoke,'' EPA–456/B–13–001, March 2013.

[240] U.S. EPA Region 9, ''Technical Support Document for EPA's Proposed Rulemaking for the California State Implementation Plan (SIP), San Joaquin Valley Unified Air Pollution Control District Rule 4901 Wood Burning Fireplaces and Wood Burning Heaters,'' August 2015. *See also* section 3.f (Conservation Management Practices) of the EPA's SJV Rules TSD.

[241] SJVUAPCD Rule 8061, as amended August 19, 2004, at section 5.2.1.

[242] 71 FR 8461 (February 17, 2006).

Department of Air Quality Section 91 (''Fugitive Dust from Unpaved Roads, Unpaved Alleys, and Unpaved Easement Roads''), and Section 93 (''Fugitive Dust from Paved Roads and Street Sweeping Equipment'').[243] Based on these evaluations, SJVUAPCD concluded that no other areas implemented requirements more stringent than those already in Rule 8061.

The District also considered the feasibility of requiring control measures on paved and unpaved roads with less than 26 annual average daily trips (AADT). Such a measure would require more road owners/operators to implement control measures to reduce fugitive emissions from paved and unpaved roads. SJVUAPCD's analysis of the emission inventory indicates that the majority of the particulate emissions attributable to unpaved roads are from roads with more than 26 AADT. Because these roads are already subject to the mitigation requirements of Rule 8061, the District concluded that the remaining emissions from unpaved roads with less than 26 AADT provide very little opportunity for additional emissions reductions. Additionally, the District noted that emissions from unpaved roads are lowest in the winter months, when exceedances of the 24-hour $PM_{2.5}$ standard tend to occur. For these reasons, SJVUAPCD concluded that additional control measures for paved and unpaved road with less than 26 AADT would not achieve emission reductions.[244]

Asphalt/Concrete Operations

SJVUAPCD Rule 4101 (''Visible Emissions''), as amended February 17, 2005, establishes limits on opacity, which is often used as an indicator of PM emissions. SJVUAPCD Rule 4309 (''Dryers, Dehydrators, and Ovens''), as amended December 15, 2005, establishes NO_X and CO emission limits for dryers, dehydrators and ovens firing gaseous or liquid fuel with a total rated heat input of at least 5.0 MMBtu/hr. Under Rule 4309, asphalt/concrete manufacturing plants that operate equipment of this size are subject to NO_X emission limits of 4.3 ppm (gaseous fuel) and 12.0 ppm (liquid fuel).[245] The EPA approved Rule 4101 into the California SIP on August 11, 2005 [246] and approved Rule 4309 into the California SIP on May 30, 2007.[247]

According to the District, there are no state regulations that apply to this source category and no analogous rules in the Bay Area, Sacramento Metro, or Ventura County areas.[248] The District evaluated analogous rules implemented in the South Coast and found no requirements more stringent than those in SJVUAPCD Rule 4101 and Rule 4309.[249] We are not aware of more stringent control requirements for visible emissions or NO_X emissions in other California districts for asphalt plants.

The District also considered the technical and economic feasibility of using warm mix asphalt (WMA), a newer substance which is produced at temperatures 25 to 90 degrees (Fahrenheit) lower than hot mix asphalt (HMA) and which results in lower emissions because it requires less fuel to heat the asphalt. Although the use of WMA has grown steadily in the U.S., the District concluded that use of WMA at asphalt production facilities in the SJV is not technically and economically feasible at this time given the high costs of, and technical difficulties associated with, converting equipment.[250]

Chapter 8 of the 2015 $PM_{2.5}$ Plan includes a commitment by the District to evaluate and promote the use of WMA in the SJV, in close coordination with stakeholders (including asphalt plant operators, Caltrans, city and county planning agencies, CARB, and the EPA); to have a draft report available for public review and comment by December 1, 2015; and to develop a final report by March 31, 2016, after addressing public comments. As part of this evaluation, the District committed to (1) evaluate opportunities to further encourage transportation and county agencies to continue transitioning from HMA to WMA as feasible, (2) to explore the potential feasibility of additional control measures and the granting of mitigation credits for WMA usage through the District's Indirect Source Review (ISR) program, and (3) to consider outreach and education opportunities for encouraging project developers and construction managers to increase the use of WMA.[251] The District issued its draft report on WMA on December 1, 2015, starting a 30-day public comment period.[252]

Confined Animal Facilities (CAFs)

SJVUAPCD Rule 4570 (''Confined Animal Facilities''), as amended October 21, 2010, applies to large dairy, poultry, beef cattle feeding and swine CAFs and requires operators of such facilities to implement measures to control VOC emissions for each major stage of operation, *e.g.,* feeding, silage, milking (dairy), housing, waste management, and waste storage/application.[253] According to the District, although Rule 4570 was developed to limit VOC emissions, the work practice standards contained in the rule also reduce ammonia emissions—for example through mitigation measures for nutritional management, increased cleaning and removal of manure and litter from housing areas, and land incorporation of manure and litter.[254] The EPA approved Rule 4570 into the California SIP on January 17, 2012.[255]

The District compared the requirements of Rule 4570 with those in analogous prohibitory rules implemented in other areas, including the South Coast, Bay Area, Sacramento Metro, Ventura County, Imperial County, and the State of Idaho, and concluded that Rule 4570 is more stringent than all of these rules.[256] For example, Rule 4570 contains applicability thresholds that are more stringent than those in analogous rules implemented in the South Coast (Rule 233) and Idaho (Rule 58.01.01).[257] We note that it is difficult to directly compare the requirements among these rules because of the widely varying rule structures and operations of confined animal facilities.

The District also considered the technical and economic feasibility of alternative control techniques for CAFs, including episodic application of sodium bisulfate (SBS) on manure at dairies, which converts a greater fraction of ammonia to non-volatile ammonium.[258] Given the costs of SBS application and its potential adverse impacts on worker safety and health, cattle health, and water quality, the District concluded that SBS application this control option is not technically and economically feasible for implementation in the SJV at this time.[259] The District also evaluated the use of covers to reduce ammonia from

[243] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–194 to C–197.

[244] *Id.* at p. C–196.

[245] SJVUAPCD Rule 4309, as adopted December 15, 2005, at p. 5.

[246] 70 FR 46770 (August 11, 2005).

[247] 72 FR 29886 (May 30, 2007).

[248] 2015 $PM_{2.5}$ Plan at Appendix C, pp. C–219, C–220.

[249] *Id.* (citing SCAQMD Rule 1157 and Rule 403).

[250] *Id.* at pp. C–221, C–225.

[251] *Id.* at Chapter 8, Section 8.2, p. 8–3.

[252] SJVUAPCD, ''Draft Further Study, Warm Mix Asphalt,'' December 1, 2015.

[253] *See generally* Rule 4570, as amended October 21, 2010; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–240.

[254] 2015 $PM_{2.5}$ Plan at Appendix C, p. C–241.

[255] 77 FR 2228 (January 17, 2012).

[256] 2015 $PM_{2.5}$ Plan at Appendix C, pp. C–236 to C–267.

[257] *Id.*

[258] *Id.* at pg. C–267.

[259] *Id.*

lagoons and solid manure storage piles and found no definitive evidence that such techniques would reduce ammonia emissions. To the contrary, the District stated, several studies indicated that anaerobic lagoon covers might increase ammonia emissions.[260]

Compost Operations

SJVUAPCD Rule 4565 (''Biosolids, Animal Manure, and Poultry Litter Operations''), as adopted March 15, 2007, establishes requirements for facilities that landfill, land apply, compost, or co-compost biosolids, animal manure, or poultry litter.[261] SJVUAPCD Rule 4566 (''Organic Material Composting''), as adopted August 18, 2011, establishes requirements for facilities that stockpile and compost greenwaste and foodwaste materials.[262] According to the District, although both of these rules were designed to control VOC emissions, both rules establish work practice standards that have the co-benefit of reducing ammonia emissions.[263] The EPA approved Rules 4565 and 4566 into the California SIP on January 17, 2012 [264] and November 29, 2012,[265] respectively.

The District compared the requirements of Rule 4565 and Rule 4566 with those in an analogous prohibitory rule implemented in the South Coast area (Rule 1133.2) and found that the SCAQMD rule requires in-vessel composting with 70% to 80% control efficiency for existing and new facilities, respectively, while SJVUAPCD Rule 4565 requires 10% to 80% control efficiency based on annual throughput.[266] According to the District, however, the lower control efficiencies required by SJVUAPCD Rule 4565 are appropriate because in-vessel composting is not cost-effective for smaller or medium-sized facilities, and SCAQMD does not regulate any facilities of the size that is subject to the 80% control requirement.[267] Moreover, the District states that Rule 4565 contains a more stringent applicability threshold (100 tpy of biosolids, animal manure or poultry litter) compared to the applicability threshold in SCAQMD Rule 1133.2 (1,000 tpy VOC).[268]

The District also considered the technical and economic feasibility of alternative control techniques for compost operations, including finished compost covers and water systems, but found that these control techniques are not technically and economically feasible for compost operations in the SJV at this time.[269] The District also noted that it has funded a project through its Technology Advancement Program that could potentially reduce ammonia and other emissions at large greenwaste and/or foodwaste composting facilities—specifically, an ''extended aerated stack pile (eASP) method'' which substitutes diesel-powered loaders with electronic conveyor systems to build piles, uses solar-powered blowers to replace diesel-powered windrow turners, and uses finished compost biofilter covers.[270] According to the District, the study authors note that this demonstration project is the first test of this technology and recommend further testing and evaluation to assure results on an industry-wide basis.[271] We note that there are other environmental benefits associated with composting operations, including diversion of material from landfills, which should be considered in evaluating the feasibility of additional controls for this source category.

b. State Measures for Mobile Sources

CARB's BACM and MSM demonstration for mobile sources is in Appendix D of the 2015 $PM_{2.5}$ Plan. CARB has primary responsibility for reducing emissions in California from new and existing on-road and off-road engines and vehicles, motor vehicle fuels, and consumer products. Given the need for significant emissions reductions from mobile sources to meet the NAAQS in California nonattainment areas, CARB has been a leader in the development of stringent control measures for on-road and off-road mobile sources, fuels and consumer products.[272]

Under the Clean Air Act, the EPA is charged with establishing national emission limits for mobile sources. States are generally preempted from establishing such limits except for California, which can establish these limits subject to EPA waiver or authorization under CAA section 209 (referred to herein as ''waiver measures''). Over the years, the EPA has issued waivers (for on-road vehicles and engines measures) or authorizations (for non-road vehicle and engine measures) [273] for many mobile source regulations adopted by CARB.[274] California attainment and maintenance plans, including the 2015 $PM_{2.5}$ Plan for the SJV, rely on emissions reductions from implementation of the waiver measures through the use of emissions models such as EMFAC2014.

Historically, California has not submitted, and the EPA has not required that California submit, its mobile source rules that have been granted a waiver or authorization by the EPA for inclusion in the California SIP. However, a recent decision by the Ninth Circuit Court of Appeals held that the EPA's longstanding practice in this regard was at odds with the CAA requirement that state and local emissions limits relied upon to meet the NAAQS be enforceable by the EPA or private citizens through

[260] Email dated June 25, 2015, from Sheraz Gill, SJVUAPCD to Andy Steckel, EPA, re: Requested Information, and attachments.

[261] *See generally* SJVUAPCD Rule 4565, as adopted March 15, 2007; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–276.

[262] *See generally* SJVUAPCD Rule 4566, as adopted August 18, 2011; *see also* 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–272.

[263] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–272 and C–276.

[264] 77 FR 2228 (January 17, 2012).

[265] 77 FR 71129 (November 29, 2012).

[266] 2015 $PM_{2.5}$ Plan, Appendix C at pp. C–272, C–273.

[267] *Id.*

[268] *Id.*

[269] *Id.* at pp. C–275 to C–276 and C–279.

[270] 2015 $PM_{2.5}$ Plan, Appendix E, p. E–15.

[271] *Id.*

[272] The Plan does not address CARB's consumer products program because it is primarily designed to reduce emissions of VOCs, which the State has excluded from its control strategy for attaining the $PM_{2.5}$ NAAQS in the SJV.

[273] California regulations use the term ''off-road'' to refer to ''nonroad'' vehicles and engines.

[274] The Clean Air Act assigns mobile source regulation to EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for nonroad vehicles and engines), and section 211(c)(4)(A) [preemption of state fuel requirements for motor vehicles, *i.e.,* other than California's motor vehicle fuel requirements—*see* section 211(c)(4)(B)]. For certain types of mobile source standards, the State of California may request a waiver or authorization for state emission standards.

CAA section 209(b)(1) and (e)(2) give California unique authority under the CAA to regulate emissions from new motor vehicles and nonroad engines, except for locomotives and engines used in farm and construction equipment less than 175 horsepower. To exercise its authority, California must obtain a waiver from EPA demonstrating that the standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards. Additionally, EPA must grant a waiver unless California's ''protectiveness determination'' is arbitrary and capricious; California does not need the standards to meet compelling and extraordinary conditions; or California's standards and accompanying enforcement procedures are not consistent with CAA § 202(a). EPA has previously stated that consistency with section 202(a) requires that California's standards must be technologically feasible within the lead time provided, giving due consideration of costs. *See, e.g.,* 74 FR 32767 (July 8, 2009) regarding the greenhouse gas waiver. Once a waiver is granted, compliance with California's new motor vehicle or engine standards is treated as compliance with applicable federal standards. In the absence of a waiver, the applicable federal mobile source standards apply.

adoption and approval of such limits in the SIP.[275]

In response to the Court's ruling, CARB has submitted its mobile source control rules that have been granted waivers or authorizations but have not been included in the SIP, and, in a separate rulemaking, the EPA has proposed to approve these rules into the SIP.[276] Upon the EPA's final approval of these rules into the SIP, which the EPA intends to complete before or concurrent with final action on the 2015 $PM_{2.5}$ Plan, the measures will be enforceable by the EPA or private citizens under the CAA.

In addition to waiver measures, CARB has adopted operational requirements for in-use vehicles, rules that limit the amounts of pollutants allowed in transportation fuels, and incentive programs that provide funding to replace or retrofit older, dirtier vehicles and equipment with cleaner technologies.[277]

The EPA previously determined that California's mobile source control programs constituted BACM for PM_{10} purposes in the San Joaquin Valley.[278] Since then, the State has adopted additional mobile source control measures including the Advanced Clean Cars program, heavy-duty vehicle idling rules, revisions to the State's vehicle inspection and maintenance (I/M) program, in-use rules for on-road and non-road diesel vehicles, and emissions standards for non-road equipment, farm and cargo handling equipment, and recreational vehicles.[279]

CARB's BACM and MSM analysis provides a discussion of the measures adopted and implemented for each of the identified source categories. We discuss each of these mobile source categories below.

Light and Medium Duty Vehicles

This category includes light-duty passenger cars, light-duty trucks, and medium-duty trucks. The source category's emissions are 32.2 tpd NO_X and 1.9 tpd direct $PM_{2.5}$.[280]

CARB has a long history of adopting programs for reducing emissions from this source category. Light-duty and medium-duty motor vehicles are currently subject to California's ''Low-Emission Vehicle III'' (LEV III) standards as well as a ''Zero Emission Vehicle'' (ZEV) requirement. The LEV III standards are consistent, or harmonized, with the subsequently adopted national Tier 3 standards for the same vehicles. California's ZEV program, however, does not have a national counterpart and results in additional emissions reductions as it phases in a requirement that 15% of new light-duty vehicle sales consist of ZEV or partial ZEV.[281] Taken as a whole, California's standards for light and medium-duty vehicles are more stringent than the federal standards.

California has also adopted regulations for gasoline fuel (California Reformulated Gasoline or CaRFG) which reduce emissions from light-duty and medium-duty vehicles. On July 10, 2009, the EPA approved the CaRFG regulations into the California SIP.[282]

Heavy-Duty Vehicles

This category includes heavy-duty gas and diesel trucks, heavy-duty gas and diesel urban buses, school buses and motor homes. The emissions from this category are 130.6 tpd NO_X and 4.8 tpd direct $PM_{2.5}$.[283]

California has the most stringent heavy-duty vehicle emissions control measures in the nation, including engine standards for diesel and gasoline vehicles, idling requirements, certification procedures, on-board diagnostic requirements, and verification measures for emissions control devices. Many of these control measures are subject to the CAA waiver process and have also been submitted for inclusion in the SIP.[284]

California has also adopted many in-use requirements to help reduce emissions from the vehicles already on the road, which may remain in use for many years. The most recently adopted in-use requirement is the Cleaner In-Use Heavy-Duty Trucks measure (''Truck and Bus Regulation and Drayage Truck Regulation''), which became effective in 2011 and the EPA approved into the SIP in 2012.[285] The Truck and Bus Regulation and Drayage Truck Regulation are designed to reduce emissions of diesel particulate matter, NO_X, and other pollutants from in-use trucks and buses and establish, among other things, phased-in PM control requirements from 2014 through 2023.

Finally, California has adopted regulations for diesel fuel that further reduce emissions from heavy-duty trucks. The EPA approved these diesel fuel regulations into the California SIP on July 10, 2009.[286]

Off-Road Vehicles and Engines

This category includes off-road compression ignition (diesel) engines and equipment, small spark ignition (gasoline) off-road engines and equipment less than 25 horsepower (hp) (*e.g.,* lawn and garden equipment), off-road large gasoline engines and equipment greater than 25 hp (*e.g.,* forklifts, portable generators), and airport ground service equipment. The emissions from this category total 19.2 tpd NO_X and 1.1 tpd direct $PM_{2.5}$.[287]

As it has done for the on-road categories discussed above, CARB has adopted stringent new emissions standards subject to EPA authorization under CAA section 209(e) and in-use measures or requirements for this source category (*e.g.,* incentives for early introduction of cleaner engines and equipment and requirements to limit vehicle idling). CARB has been regulating off-road equipment since the 1990s and its new engine standards for off-road vehicles and engines are generally as stringent as the corresponding federal standards. For larger off-road equipment, which can have a slow turnover rate, CARB adopted an in-use off-road regulation in 2007 that requires owners of off-road equipment in the construction and other industries to retrofit or replace older engines/equipment with newer, cleaner models. The off-road regulation also imposes idling limitations.[288]

Farm Equipment

The farm equipment category includes agricultural equipment such as tractors, harvesting equipment and sprayers. The category's emissions are 50.4 tpd NO_X and 2.9 tpd $PM_{2.5}$. CARB has adopted standards identical to the EPA's standards for this off-road engine category. CARB notes also that State, District, and federal incentive funds have resulted in the replacement of over 3,000 pieces of agricultural equipment earlier than required by state and federal regulations.[289]

Other Mobile Source Categories

Other mobile source categories identified by CARB in the Plan include cargo handling equipment, motorcycles, recreational boats, off-road recreational vehicles and commercial harbor craft. The emissions from all of these

[275] *Committee for a Better Arvin* v. *EPA*, 786 F.3d 1169 (9th Cir. 2015).

[276] 80 FR 69915 (November 12, 2015).

[277] 2015 $PM_{2.5}$ Plan, Appendix D, pp. D–9 to D–11.

[278] 69 FR 5412 at 5419 (February 4, 2004).

[279] 2015 $PM_{2.5}$ Plan, Appendix D, pages D–4 to D–19.

[280] 2015 $PM_{2.5}$ Plan, Appendix D, p. D–5.

[281] 78 FR 2112 at 2119 (January 9, 2013).

[282] 74 FR 33196 (July 10, 2009).

[283] 2015 $PM_{2.5}$ Plan, Appendix D, p. D–8.

[284] 2015 $PM_{2.5}$ Plan, Appendix D, p. D–8 to D–12. *See also* 80 FR 69915 (November 12, 2015).

[285] 77 FR 20308, April 4, 2012.

[287] 2015 $PM_{2.5}$ Plan, Appendix D, pp. D–12 to D–14.

[288] *Id.*

[289] 2015 $PM_{2.5}$ Plan, Appendix D, pp. D–15.

categories total 3.5 tpd NO_X and 0.5 tpd direct $PM_{2.5}$. Although CARB considers these categories ''insignificant'' for BACM purposes in the 2015 $PM_{2.5}$ Plan, CARB provided a discussion of the emission standards and other measures it has adopted to control emissions from these categories.[290]

c. Local Jurisdiction Transportation Control Measures (TCMs)

TCMs are, in general, measures designed to reduce emissions from on-road motor vehicles through reductions in vehicle miles traveled or traffic congestion. TCMs can reduce $PM_{2.5}$ emissions in both the on-road motor vehicle exhaust and paved road dust source categories by reducing vehicle miles traveled (VMT) and vehicle trips. They can also reduce vehicle exhaust emissions by relieving congestion. EPA guidance states that where mobile sources contribute significantly to $PM_{2.5}$ violations, ''the state must, at a minimum, address the transportation control measures listed in CAA section 108(f) to determine whether such measures are achievable in the area considering energy, environmental and economic impacts and other costs.'' [291]

The current efforts by the SJV's eight local jurisdiction metropolitan planning organizations (MPO) [292] to implement cost-effect transportation control measures (TCM) are described in Chapter 6.5.6 of the 2015 $PM_{2.5}$ Plan.[293] The Plan includes a discussion of the on-going implementation of a broad range of TCMs in the Valley. There is also a discussion of the MPOs' Congestion Management and Air Quality (CMAQ) funding policy, which is a standardized process across the Valley for distributing 20% of the CMAQ funds to projects that meet a minimum cost-effectiveness.[294]

Each Valley MPO is required to update its Regional Transportation Plan (RTP) at least once every four years.[295] The RTP is a long-term regional transportation plan that provides a vision for transportation investments throughout the Valley. To further illustrate the eight SJV MPOs' commitment to the implementation of TCMs, the RTPs contain a host of improvements to the regional multimodal transportation system including: Active transportation (*e.g.,* biking and walking), transportation demand management, transportation system management, transit, passenger rail, goods movement, aviation and airport ground access, highways, arterials, and operations and maintenance. Included within these transportation system improvements are TCM projects that reduce vehicle use or change traffic flow or congestion conditions, such as: Improved transit, high occupancy vehicle lanes, traffic flow improvements, park and ride lots, ridesharing/trip reduction programs, and bicycle/pedestrian facilities.[296] These projects are listed in each MPO's conformity analysis for the 2014 RTP and 2015 Federal Transportation Improvement Program (FTIP).[297] The FTIP is a four-year spending plan that lists every transportation project that will receive federal funds or that is subject to a federally required action, such as a review and approval of environmental documents.

The SJV has a long history of adopting and then enhancing programs to reduce emissions from on-road motor vehicles by reducing vehicle miles traveled, vehicle trips, and/or congestion. For example, Rule 9410 (''Employer Based Trip Reduction'' or ''eTRIP''), requires larger employers to establish an Employer Trip Reduction Implementation Plan to encourage employees to reduce single-occupancy vehicle trips, thus reducing emissions, including $PM_{2.5}$ and NO_X, associated with work commutes.[298] The MPOs implement public outreach programs to encourage people to reduce driving, programs to improve bicycling and pedestrian travel, and an extensive program to synchronize traffic lights.

In our approval of California's Serious area plan for the 1987 PM_{10} NAAQS in the SJV [299] (''2003 PM_{10} Plan''), we determined that the measures in the ''Regional Transportation Planning Agency Commitments for Implementation Document'' (April 2002) [300] satisfied the PM_{10} BACM requirement for TCMs.[301] In May 2003, the San Joaquin Valley MPO Executive Directors committed to conduct feasibility analyses as part of each successive RTP in support of the 2003 PM_{10} Plan. The MPOs retained this commitment in the PM_{10} maintenance plan for the SJV area adopted September 20, 2007.[302] In accordance with their commitment and in preparation for their 2014 RTPs, the MPOs reviewed several PM_{10} Plans adopted in other areas since 2009.[303] From their reviews, the MPOs concluded no additional on-road fugitive dust controls measures were available for consideration. In consultation with CARB and the District, however, the MPOs considered priority funding allocations in the 2014 RTPs for PM_{10} and NO_X emission reduction projects for the measures listed below.

- Paving or Stabilizing Unpaved Roads and Alleys
- Curbing, Paving, or Stabilizing Shoulders on Paved Roads
- Frequent Routine Sweeping or Cleaning of Paved Roads (*i.e.,* funding allocation for the purchase of PM_{10} efficient street sweepers for member jurisdictions); and
- Repave or Overlay Paved Roads with Rubberized Asphalt.[304]

In their implementation of the Congestion Mitigation and Air Quality (CMAQ) Improvement Program, the SJV MPOs evaluate and prioritize the

[290] 2015 $PM_{2.5}$ Plan, Appendix D, pp. D–15 to D–18.

[291] Addendum at 42013.

[292] These eight MPOs represent the eight counties in the San Joaquin Valley air basin: The San Joaquin Council of Governments, the Stanislaus Council of Governments, the Merced County Association of Governments, the Madera County Transportation Commission, the Council of Fresno County Governments, Kings County Association of Governments, the Tulare County Association of Governments and Kern Council of Governments.

[293] 2015 $PM_{2.5}$ Plan, Chapter 6.5.6, p. 6–19.

[294] For an example of the CMAQ funding policy implemented by the eight SJV MPOs, *see* ''Resolution To Adopt The Local Cost-Effectiveness Congestion Mitigation And Air Quality (CMAQ) Program Policy,'' San Joaquin Council Of Governments (SJCOG), R–08–03, July 26, 2007,'' and ''Exhibit A, Local Cost-Effectiveness CMAQ Policy,'' SJCOG.

[295] 23 CFR 450.322(c)

[296] *See, e.g.,* Fresno Council of Government's Conformity Analysis for 2014 RTP and Sustainable Community Strategy, adopted June 26, 2014, Appendix D, *Timely Implementation Documentation for Transportation Control Measures.* The 2014 RTP is combined with the Sustainable Communities Strategy to integrate land use and transportation planning to achieve, where feasible, regional greenhouse gas (GHG) targets set by the CARB pursuant to Senate Bill 375, which identifies specific GHG reduction goals for each of California's MPOs in 2020 and 2035.

[297] *Id.*

[298] EPA, Final rule, ''Approval and Promulgation of Implementation Plans; California; San Joaquin Valley Unified Air Pollution Control District; Employer Based Trip Reduction Programs,'' pre-publication notice signed December 11, 2015; *see also* 80 FR 51153 (August 24, 2015) (proposed rule).

[299] SJVUAPCD, ''2003 PM_{10} Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter of 10 Microns and Smaller,'' submitted August 19, 2003 as amended by subsequent submission of December 30, 2003.

[300] SJVUAPCD, ''Regional Transportation Planning Agency Commitments for Implementation Document,'' April 2002.

[301] 69 FR 30006 at 30020, 30035 (May 26, 2004).

[302] SJVUAPCD, ''2007 PM_{10} Maintenance Plan and Request for Redesignation,'' submitted November 16, 2007. Chapter 7, p. 21.

[303] PM_{10} Plans reviewed included: Puerto Rico, Municipality of Guaynabo, PM_{10} Limited Maintenance Plan; Nogales, AZ, PM_{10} Attainment Demonstration; Coso Junction, CA, PM_{10} Maintenance Plan, May 17, 2010; Sacramento, CA, PM_{10} Implementation/Maintenance Plan, October 28, 2010; Truckee Meadows, NV, PM_{10} Maintenance Plan, May 2009; and Eagle River, AK, PM_{10} Maintenance Plan, adopted August 2010.

[304] *See, e.g.,* Fresno Council of Government's Conformity Analysis for 2014 RTP and Sustainable Community Strategy, adopted June 26, 2014, Chapter 4, Section E, p. 42.

reduction of PM_{10} emissions in the CMAQ scoring criteria. The MPOs continue to implement the adopted San Joaquin Valley CMAQ Policy, which was included in the District's plan for the 1997 ozone NAAQS [305] and the 2008 $PM_{2.5}$ Plan. The CMAQ policy includes a standardized process for distributing 20% of the CMAQ funds to projects that meet a minimum cost effectiveness beginning in fiscal year 2011. This policy focuses on achieving the most cost effective emissions reductions, while maintaining flexibility to meet local needs. The 2015 FTIP includes a listing of all transportation-related projects requiring federal funding or other approval by the federal transportation agencies. The aggregate funding allocated [306] for TCMs in the eight SJV 2015 FTIPs includes:

- Improved transit; ($928,000,000)
- traffic flow improvements ($499,381,000)
- park and ride lots; ($2,666,346)
- ridesharing/trip reduction programs; ($7,630,000)
- bicycle/pedestrian facilities ($6,650,000)

3. Conclusion

Based on all of these evaluations, we propose to find that the 2015 $PM_{2.5}$ Plan provides for the implementation of BACM and MSM for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors as expeditiously as practicable, in accordance with the requirements of CAA sections 189(b)(1)(B) and 188(e).

E. Extension of Serious Area Attainment Date Under CAA Section 188(e)

Section 188(e) of the Act allows the EPA to extend the attainment date for a serious area for up to five years if attainment by the applicable date is impracticable. However, before we may grant an extension of the attainment date, the State must first:

(1) Apply to the EPA for an extension of the $PM_{2.5}$ attainment date beyond 2015,

(2) demonstrate that attainment by 2015 is impracticable,

(3) have complied with all requirements and commitments applying to the area in its implementation plan,

(4) demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are achieved in practice in any state and are feasible for the area, and

(5) submit SIP revisions containing a demonstration of attainment by the most expeditious alternative date practicable.

We evaluate the 2015 $PM_{2.5}$ Plan's compliance with each of these requirements below.

1. Application for an Attainment Date Extension

As discussed in section IV.D of this proposed rule, for the SJV, the Serious area attainment date for the 1997 $PM_{2.5}$ NAAQS under CAA section 188(c)(2) is December 31, 2015. The first criterion of an extension of the attainment date beyond this statutory attainment date is that the State must apply for such extension. In the 2015 $PM_{2.5}$ Plan, CARB and SJVUAPCD submit a complete application for an extension of the Serious area attainment date for the SJV to December 31, 2020 for the 1997 annual $PM_{2.5}$ standard and to December 31, 2018 for the 1997 24-hour $PM_{2.5}$ standard.[307]

2. Demonstration That Attainment by Serious Area Attainment Date Is Impracticable

Despite the implementation of BACM as expeditiously as practicable, as discussed in section V.D. above, the 2015 $PM_{2.5}$ Plan shows that attainment by the Serious area attainment date is impracticable. We discuss below the air quality data that support the State's and District's demonstration of impracticability.

Chapter 4, Section 4.1 of the 2015 $PM_{2.5}$ Plan presents data showing that the SJV area cannot attain the 1997 $PM_{2.5}$ annual and 24-hour standards by December 31, 2015.[308] Specifically, the District provided ambient $PM_{2.5}$ air quality data from monitoring sites in the SJV, including 2013 measured concentrations and 2014 measured and estimated concentrations, and then calculated the maximum 2015 annual average and 24-hour concentrations for each monitoring site that would result in a 3-year average $PM_{2.5}$ concentration of 15.0 $\mu g/m^3$ (*i.e.,* annual design value), and 3-year average 98th percentile concentration of 65 $\mu g/m^3$ (*i.e.,* 24-hour design value), at each monitoring site. The District states that several of the maximum allowable 2015 concentrations are so low, and in one instance a negative number, that attaining the standards by December 31, 2015 is impracticable.[309] A separate analysis is presented for the annual and 24-hour standards and we have evaluated each with respect to demonstrating impracticability of attaining the 1997 $PM_{2.5}$ NAAQS.

The annual average value for a given year is calculated using the quarterly average concentrations for that year, while the 24-hour value for a given year is calculated using the 98th percentile of 24-hour average concentrations for that year.[310] At the time the District compiled monitoring data for this purpose in January 2015, actual $PM_{2.5}$ measurements were available for 2013 and most of 2014 from the EPA's Air Quality System (AQS) database. For the remainder of the 2014 data, preliminary monitoring measurements were used for the latter portion of 2014 and, for four of the 16 monitors used in the analysis, the District used 2013 4th quarter data for the 2014 4th quarter data, since the 2014 filter data from those monitors were not yet available.[311]

Impracticability of Attaining the 1997 Annual $PM_{2.5}$ Standard by December 31, 2015

According to the District, the maximum 2015 annual average concentration at the Bakersfield-Planz site (which recorded the area's highest annual average in 2013, and is estimated to have the highest annual average in 2014) that will enable the site to show a design value at or below 15.0 $\mu g/m^3$ for 2015 is negative 2.4 $\mu g/m^3$.[312] In addition, the District calculates that the Hanford, Visalia-Church, and Bakersfield-California monitoring sites (which are in the three southern-most counties in the SJV) would have to each average under 10 $\mu g/m^3$, and states that such concentrations are unlikely given historical $PM_{2.5}$ concentrations in the SJV.[313] Based on these preliminary data and analyses, the 2015 $PM_{2.5}$ Plan concludes that it is impracticable for the Hanford, Visalia-Church, Bakersfield-California, and Bakersfield-Planz monitoring sites, to show an annual $PM_{2.5}$ NAAQS design value at or below 15.0 $\mu g/m^3$ by December 31, 2015.

The EPA independently evaluated 2013 and 2014 $PM_{2.5}$ air quality data

[305] SJVUAPCD, ''2007 Ozone Plan,'' April 30, 2007, which EPA approved on March 1, 2012. (78 FR 12652).

[306] **Source:** 2015 $PM_{2.5}$ Plan, Chapter 6, Figure 6–2 Illustration of Valley MPO Funding for Sample TCM Categories, p. 6–20. The funding in the 2015 FTIPs covers the federal fiscal years (*i.e.,* October 1–September 30) 2014/2015 through 2017/2018. An example 2015 FTIP, the *2015 Federal Transportation Improvement Program,* Fresno Council of Governments, is included in the docket for today's action and available at *http://www.fresnocog.org/sites/default/files/publications/FTIP/2015_FTIP/FINAL_2015_FTIP_8-13-14.pdf.*

[307] 2015 $PM_{2.5}$ Plan: CARB Resolution 15–9, May 21, 2015 (submitting the Plan to EPA as a SIP revision); SJVAPCD, Governing Board Resolution 15–4–7A, paragraph 1 (adopting the 2015 $PM_{2.5}$ Plan); and Chapter 4, p. 4–1.

[308] 2015 $PM_{2.5}$ Plan, Chapter 4, pp. 4–1 to 4–5.

[309] *Id.* at pp. 4–3 to 4–5.

[310] 40 CFR 50, Appendix N, sections 4.4 and 4.5, respectively.

[311] 2015 $PM_{2.5}$ Plan, Chapter 4, Table 4–1, p. 4–4.

[312] *Id.*

[313] *Id.* at p. 4–4.

that had been uploaded to AQS as of June 30, 2015, and as of January 20, 2016, to assess the District's representations.[314] Table 4 shows the annual average $PM_{2.5}$ concentrations that were recorded in 2013 and 2014 and that the EPA estimated for 2015 at selected monitoring sites. The average annual concentrations in 2013 and 2014 were higher than in 2012, and in several cases the 2013 and 2014 values were significantly higher than the 2012 value, especially at the Bakersfield-Planz monitoring site, whose annual average concentrations for 2013 and 2014 were each over 20 μg/m³.[315] Based on the annual average concentrations observed in 2013 and 2014, the EPA calculated the maximum annual average concentration for seven monitoring sites that would enable each site to show a 2015 annual average $PM_{2.5}$ design value at or below 15.04 μg/m³.[316]

The EPA found that four monitoring sites located in the three southern-most counties of the SJV would have to have 2015 annual mean concentrations 35% or more below their corresponding historical lows in order to attain by the end of 2015.[317] The most extreme example is the Bakersfield-Planz Rd. monitoring site, which would require approximately 95% below the previously recorded low.

TABLE 4—2013 AND 2014 ANNUAL AVERAGE $PM_{2.5}$ CONCENTRATIONS (IN μg/m³) FOR SELECTED SITES IN SJV AND CALCULATION OF ANNUAL AVERAGE MAXIMUM TO ATTAIN IN 2015

	Annual average in 2013 [a]	Annual average in 2014 [a]	EPA Estimate for max. 2015 annual average allowed to attain [b]	Lowest recorded annual average 1999–2014 (year) [b]	Max. 2015% below lowest recorded annual average
Hanford	18.18	17.47	9.47	14.79 (2012)	36
Visalia	18.90	17.88	8.34	13.58 (2010)	39
Bakersfield–California	19.95	18.55	6.62	13.03 (2012)	49
Bakersfield–Planz	22.79	21.61	0.72	14.45 (2011)	95

[a] 2014 AQS Design Value Report, AMP480.
[b] *See* Appendix A of the EPA's General TSD.

In sum, air quality data for the 2013–2014 period indicate that it is not practicable for the Hanford, Visalia-Church, Bakersfield-California, and Bakersfield-Planz monitoring sites to show an annual $PM_{2.5}$ NAAQS design value at or below 15.0 μg/m³ by December 31, 2015. While our analyses resulted in slightly different numbers for the maximum annual average concentrations allowed to attain for 2015, they are consistent with the analysis and conclusion in the 2015 $PM_{2.5}$ Plan that attainment is impracticable at these sites. As such, we propose to determine that the SJV area cannot practicably attain the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015.

Impracticability of Attaining the 1997 24-Hour $PM_{2.5}$ Standard by December 31, 2015

According to the District, the maximum 2015 24-hour average $PM_{2.5}$ concentration at the Bakersfield-Planz site (which recorded the area's highest 24-hour average in 2013 and was estimated to have recorded the highest 24-hour average concentration in 2014) that will enable the site to show a design value at or below 65 μg/m³ for 2015 is 15.9 μg/m³.[318] In addition, the District states that other monitoring sites in the southern portion of the SJV would have to record improbably low 2015 average concentrations, of which the lowest are the Hanford and Bakersfield-California sites at 44.6 μg/m³ and 44.4 μg/m³, respectively.[319] Based on these preliminary data and analyses, the 2015 $PM_{2.5}$ Plan concludes that it is not possible for the Bakersfield-Planz monitoring site, and extremely unlikely for the Hanford and Bakersfield-California sites, to show a 24-hour $PM_{2.5}$ NAAQS design value at or below 65 μg/m³ by December 31, 2015.

As with the annual standard, the EPA independently evaluated 2013 and 2014 $PM_{2.5}$ air quality data available in AQS as of June 30, 2015, and as of January 20, 2016, to assess the District's representations.[320] Table 5 shows the 98th percentile 24-hour average $PM_{2.5}$ concentrations that were recorded in 2013 and 2014 and the maximum concentrations allowed to attain that the EPA estimated for 2015 at selected monitoring sites. The 98th percentile 24-hour concentrations in 2013 and 2014 were higher than in 2012, and in some cases the 2013 and 2014 values were significantly higher than the 2012 value, especially at the Bakersfield-Planz monitoring site, whose 98th percentile concentration for 2013 was over 95 μg/m³.[321] Based on the 98th percentile values observed in 2013 and 2014, the EPA calculated the maximum 98th percentile 24-hour concentration for six monitoring sites that would enable the site to show a 2015 24-hour $PM_{2.5}$ design value at or below 65.4 μg/m³.

The EPA found that the Bakersfield-Planz monitoring site would have to have a 2015 annual mean concentration recorded at 44% below its

[314] *See* Section III (''Analysis of Practicability of Attainment'') and Appendix A (''Data Worksheets for Analysis of Practicability of Attainment'') of the EPA's General TSD.

[315] The 2015 $PM_{2.5}$ Plan cites weather conditions associated with the extreme drought in California, including low precipitation, high stagnation, and strong inversions, among the reasons for the high $PM_{2.5}$ concentrations observed in the winter of 2013–2014. *See* 2015 $PM_{2.5}$ Plan, Chapter 4, pp. 4–2 to 4–3 and 4–5.

[316] The small differences between the District's and EPA's calculations of ''maximum 2015'' values are due to EPA's use of certified, rather than preliminary, 2014 data and different rounding conventions. EPA's calculations of maximum 2015 values are based on the rounding convention in 40 CFR part 50, appendix N, which provides that intermediate calculations are not rounded, and that a design value with a decimal lower than 15.05 μg/m³ is rounded down to 15.0 μg/m³. *See* 40 CFR part 50, appendix N, section 4.3. In computing the maximum 2015 concentration consistent with attainment and consistent with 2013 and 2014 annual mean concentrations, EPA did not round the 2013 and 2014 means in the intermediate steps of the calculation, and used 15.04 μg/m³ as the highest design value consistent with the standard. In contrast, the calculations presented in the 2015 $PM_{2.5}$ Plan rounded the 2013 and 2014 means to one decimal place initially, and used 15.00 μg/m³ as the highest attaining design value.

[317] *See* section III and Appendix A of the EPA's General TSD.

[318] 2015 $PM_{2.5}$ Plan, Chapter 4, Table 4–2, p. 4–5.

[319] *Id.*

[320] *See* section III and Appendix A of the EPA's General TSD.

[321] The 2015 $PM_{2.5}$ Plan cites weather conditions associated with the extreme drought in California, including low precipitation, high stagnation, and strong inversions, among the reasons for the high $PM_{2.5}$ concentrations observed in the winter of 2013–2014. *See* 2015 $PM_{2.5}$ Plan, Chapter 4, pp. 4–2 to 4–3 and 4–5.

corresponding historical low in order to attain by the end of 2015.[322]

TABLE 5—2013 AND 2014 24-HOUR $PM_{2.5}$ CONCENTRATIONS (IN μg/m³) FOR SELECTED SITES IN SJV AND CALCULATION OF MAXIMUM 98TH PERCENTILE CONCENTRATIONS FOR 2015

	98th Percentile in 2013 [a]	98th Percentile in 2014 [a]	EPA estimate for max. 2015 98th percentile allowed to attain [b]	Lowest recorded 98th percentile 1999–2014 (year) [b]	Max. 2015% below lowest recorded annual average
Hanford	67.6	81.9	46.7	48.3 (2012)	3
Bakersfield–California	71.8	79.9	44.5	53.3 (2010)	17
Bakersfield–Planz	96.7	76.7	22.8	40.6 (2012)	44

[a] 2014 AQS Design Value Report, AMP480.
[b] Appendix A of the EPA's General TSD.

For these three sites, the EPA's analysis largely confirms the analysis presented in the 2015 $PM_{2.5}$ Plan of the maximum 98th percentile concentration allowed for the SJV to attain the 1997 24-hour $PM_{2.5}$ standard by December 31, 2015 (*e.g.,* EPA estimated maximum is 22.8 μg/m³ at Bakersfield-Planz compared to District estimated maximum of 15.9 μg/m³, both of which are well below the historic low). For the Bakersfield-California site, the estimated maximum 98th percentile concentrations are 17% below the historic low, which is quite low, while the estimated maximum 98th percentile concentration at Hanford site is not drastically different than its historic low. However, such values would appear very unlikely given the 98th percentile values in 2013 and 2014 and do not alter the clear impracticability of attaining the 1997 24-hour $PM_{2.5}$ standard at the Bakersfield-Planz site.

In sum, air quality data for the 2013–2014 period indicate that it is not practicable for the Bakersfield-Planz monitoring site to show an annual $PM_{2.5}$ NAAQS design value at or below 15.0 μg/m³ by December 31, 2015. While our analysis resulted in slightly different numbers for the maximum annual average concentrations for 2015, they are consistent with the Plan's analysis and conclusion that attainment is impracticable at this site. As such, we propose to determine that the SJV area cannot practicably attain the 1997 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015.

3. Compliance With All Requirements and Commitments in the Implementation Plan

We interpret this criterion to mean that the State has implemented the control measures and commitments in the plan revisions it has submitted to address the applicable requirements in CAA sections 172 and 189 for $PM_{2.5}$ nonattainment areas. For a Serious area attainment date extension request being submitted simultaneously with the initial Serious area attainment plan for the area, the EPA proposes to read section 188(e) not to require the area to have a fully approved Moderate area attainment plan and to allow for extension of the attainment date if the area has complied with all Moderate area requirements and commitments pertaining to that area in the State's submitted Moderate area implementation plan. This interpretation is based on the plain language of section 188(e), which requires the State to comply with ''all requirements and commitments pertaining to [the] area in the implementation plan.'' [323]

Between 2007 and 2011, California made six SIP submissions to address nonattainment area planning requirements for the 1997 $PM_{2.5}$ NAAQS in the SJV,[324] which we refer to collectively as the ''2008 $PM_{2.5}$ Plan.'' On November 9, 2011, the EPA approved all elements of the 2008 $PM_{2.5}$ Plan except for the contingency measures, which the EPA disapproved.[325] As part of this action, the EPA approved, among other things, commitments by CARB and the SJVUAPCD to take specific actions with respect to identified control measures and to achieve specific amounts of NO_X, SO_X, and direct $PM_{2.5}$ emission reductions by 2014.[326] In July 2013, the State submitted a revised $PM_{2.5}$ contingency measure plan for the SJV, which the EPA fully approved in May 2014.[327]

On May 20, 2015, the Ninth Circuit Court of Appeals issued its decision in a challenge to the EPA's November 9, 2011 action on the 2008 $PM_{2.5}$ Plan.[328] In *Committee for a Better Arvin et. al* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015) (*CBA*), the court held that the EPA violated the CAA by approving the 2008 $PM_{2.5}$ Plan even though the plan did not include certain state-adopted mobile source emission standards on which the plan relied to achieve its emission reduction goals.[329] The *CBA* court remanded the EPA's action on the 2008 $PM_{2.5}$ Plan for further proceedings consistent with the decision but did not vacate the EPA's action.[330] Thus, absent an EPA rulemaking to withdraw or revise the EPA's November 2011 approval of the control measure and emission reduction commitments in the 2008 $PM_{2.5}$ Plan, all of these commitments remain enforceable components of the California SIP.[331]

The specific State and District commitments that the EPA approved into the California SIP as part of the 2008 $PM_{2.5}$ Plan are as follows:

(1) A commitment by the District to ''adopt and implement the rules and measures in the 2008 $PM_{2.5}$ Plan'' in accordance with the timetable specified in Table 6–2 of the 2008 $PM_{2.5}$ Plan, as

[322] *See* Appendix A of the EPA's General TSD.

[323] The Ninth Circuit Court of Appeals upheld this interpretation of section 188(e) in *Vigil* v. *Leavitt,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

[324] 76 FR 69896 at n. 2 (November 9, 2011).

[325] *Id.* at 69924.

[326] *Id.* at 69926 (codified at 40 CFR 52.220(c)(356)(ii)(B)(*2*), 52.220(c)(392)(ii)(A)(*2*), and 52.220(c)(395)(ii)(A)(*2*)).

[327] 79 FR 29327 (May 22, 2014).

[328] *Committee for a Better Arvin et al* v. *EPA,* 786 F.3d 1169 *(9th Cir. 2015).*

[329] *Id.*

[330] *Id.*

[331] As a consequence of the *CBA* decision, EPA recently proposed to withdraw its May 2014 approval of the District's $PM_{2.5}$ contingency measure submission and to disapprove this submission in its entirety. 80 FR 49190 (August 17, 2015). Upon EPA's final withdrawal of this action and disapproval of the $PM_{2.5}$ contingency measure submission, the measures and commitments in this submission will no longer be required components of the California SIP.

amended June 17, 2010, and to submit these rules and measures to CARB for transmittal to the EPA as SIP revisions; [332]

(2) A commitment by CARB to propose specific measures identified in Appendix B of the ''Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions,'' dated April 28, 2011 (2011 Progress Report), in accordance with the timetable specified therein; [333]

(3) A commitment by the District to achieve a total of 8.97 tpd of NO_X emission reductions, 6.7 tpd of direct $PM_{2.5}$ emission reductions, and 0.92 tpd of SO_X emission reductions by 2014 as described in Table 6–3a, Table 6–3b, and Table 6–3c, respectively, of the 2008 $PM_{2.5}$ Plan; and

(4) A commitment by CARB to achieve a total of 17.1 tons per day (tpd) of NO_X emission reductions and 2.3 tpd of direct $PM_{2.5}$ emission reductions by 2014 as described in CARB Resolution No. 07–28, Attachment B, as amended in 2009 and 2011.[334]

As of November 9, 2011, the date of the EPA's final action on the 2008 $PM_{2.5}$ Plan, CARB and the District had each satisfied substantial portions of these control measure and emission reduction commitments. Specifically, the District had adopted 12 of the 13 measures that it had committed to adopt and implement as part of its control strategy for attaining the $PM_{2.5}$ standards, leaving one additional measure that was scheduled for adoption in 2014 (Rule 4905 (''Natural Gas-Fired, Fan Type Residential Central Furnaces'').[335] CARB had proposed action on six of the seven measures that it had committed to propose for Board consideration as part of its $PM_{2.5}$ control strategy for the SJV, leaving one additional measure that was scheduled for proposal in 2013 (''New Emissions Standards for Recreational Boats'').[336] Finally, together CARB and the District had achieved all of the SO_X emission reduction commitments and substantial portions of the direct $PM_{2.5}$ and NO_X emission reduction commitments through implementation of State and District control strategy measures, leaving 3.0 tpd of direct $PM_{2.5}$ emission reductions and 12.9 tpd of NO_X emission reductions yet to be achieved by the beginning of 2014.[337]

The CARB Staff Report for the 2015 $PM_{2.5}$ Plan [338] contains the State's demonstration that both CARB and the District have satisfied the commitments in the 2008 $PM_{2.5}$ Plan that remained outstanding as of November 9, 2011, as follows. First, on January 22, 2015, the District adopted Rule 4905 and on April 7, 2015, CARB submitted this rule to the EPA as a revision to the California SIP.[339] Second, on February 19, 2015, CARB proposed for Board consideration, and the Board adopted, new emission standards for recreational boats entitled ''Evaporative Emissions Control Requirements for Spark-Ignited Watercraft.'' [340] These State and District rulemaking actions satisfied the last remaining commitments concerning specific control measures in the 2008 $PM_{2.5}$ Plan.

With respect to the outstanding emission reduction commitments (also called ''aggregate commitments''), Tables 9 and 10 of the CARB Staff Report, as amended by CARB's Technical Clarifications, identify nine specific State and District control measures that, according to CARB, achieved emission reductions beyond those already credited toward the 2008 $PM_{2.5}$ Plan and that satisfy the State's remaining 2014 emission reduction obligations. These measures are identified in Table 6.

TABLE 6—2008 $PM_{2.5}$ PLAN AGGREGATE COMMITMENT—STATE AND DISTRICT-IDENTIFIED MEASURES

Measure	2014 Emission reductions (annual average tpd)	
	NO_X	Direct $PM_{2.5}$
Rule 4320 (Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater than 5.0 MMBtu/hr)	1.8	0.0
Rule 9510 (Indirect Source Review)	1.0	0.1
Woodstove Replacements	0.0	0.1
District Funded Incentive-Based Emission Reduction Measures	1.5	0.1
Rule 9410 (Employer Based Trip Reduction)	0.3	0.0
Rule 4901 (Wood Burning Fireplaces and Wood Burning Heaters)	0.0	1.3
State Funded Incentive-Based Emission Reduction Measures	7.8	0.2
CARB Cleaner In-Use Heavy Duty Trucks Measure	11.5	0.1
CARB Portable Equipment Registration Program (PERP) and Portable Engine ATCM	2.5	0.2
Total Emission Reductions	26.4	2.1

Source: CARB Staff Report, pp. 21, 22 and Technical Clarifications, pp. 2 to 4.

We have reviewed the State's demonstration with respect to each of these nine measures and, for the reasons provided below, we propose to find that all but one may be credited toward the State's outstanding 2014 emission reduction obligations.

First, with respect to SJVUAPCD's Rule 4320 (''Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater than 5.0 MMBtu/hr''), also called the ''AERO Rule,'' the EPA approved this rule as adopted October 2008 into the

[332] 40 CFR 52.220(c)(392)(ii)(A)(*2*), SJVUAPCD Governing Board Resolution No. 08–04–10 (April 30, 2008), and SJVUAPCD Governing Board Resolution No. 10–06–18 (June 17, 2010); *see also* 76 FR 69896 at 69921, Table 1 (November 9, 2011).

[333] 40 CFR 52.220(c)(395)(ii)(A)(*2*), CARB Resolution No. 07–28, Attachment B (September 27, 2007), CARB Resolution No. 09–34 (April 24, 2009), and CARB Resolution No. 11–24 (April 28, 2011); *see also* 76 FR 69896 at 69921–69922, Table 2 (November 9, 2011).

[334] 40 CFR 52.220(c)(356)(ii)(B)(*2*).

[335] 76 FR 69896 at 69921, Table 1 (''San Joaquin Valley Air Pollution Control District 2008 $PM_{2.5}$ Plan Specific Rule Commitments'').

[336] 76 FR 69896 at 69922, Table 2 (November 9, 2011) (''2007 State Strategy Defined Measures Schedule for Consideration and Current Status'').

[337] *Id.* at 69923, Table 4 (''Reductions Needed for Attainment Remaining as Commitments Based on SIP-Creditable Measures'').

[338] 2015 $PM_{2.5}$ Plan, CARB Staff Report, pp. 17–22 and Appendix B.

[339] CARB Staff Report, Table 7, p. 19 and letter dated April 7, 2015, from Richard Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9 (transmitting air district regulations to EPA as California SIP revisions).

[340] CARB Staff Report, Table 8, p. 20; *see also http://www.arb.ca.gov/regact/2015/simw2015/simw2015.htm.*

California SIP on March 25, 2011 [341] but did not credit the rule with any emission reductions as part of the attainment demonstration in the 2008 $PM_{2.5}$ Plan.[342] In the proposal to approve this rule into the SIP, the EPA stated that because this rule allows regulated entities to pay a fee in lieu of meeting NO_X emission limits, the State would need to demonstrate that the fee provisions achieve emission reductions that are quantifiable, surplus, enforceable, and permanent consistent with EPA guidance before relying on this rule for credit in an attainment plan.[343]

In the CARB Staff Report, the State explained that it now has documentation showing that operators of 472 of the units subject to Rule 4320 chose to pay fees and that operators of the remaining 692 units subject to the rule chose to retrofit their equipment to comply with the NO_X emission limits in the rule.[344] CARB also explained that, based on these enforceable emission limits, the District estimated that the operators of the 692 units that did not pay fees had achieved 1.8 tpd of actual NO_X emission reductions by the beginning of 2014, based on an operating capacity of 50% or 75%.[345] We find this documentation adequate to credit Rule 4320 with 1.8 tpd of NO_X emission reductions toward the State's outstanding 2014 emission reduction obligation.

Second, with respect to SJVUAPCD's Rule 9510 (''Indirect Source Review''), the EPA approved this rule as adopted December 2005 into the California SIP on May 9, 2011 [346] but did not credit the rule with any emission reductions as part of the attainment demonstration in the 2008 $PM_{2.5}$ Plan.[347] In the final rule to approve Rule 9510 into the SIP, the EPA identified a number of concerns about the enforceability of the rule's provisions, *e.g.,* provisions that allow project developers to pay a fee instead of implementing on-site pollution mitigation plans, and noted that the State would need to resolve these enforceability issues before relying on this rule for credit in an attainment plan.[348]

In the CARB Staff Report, the State explained that it now has documentation of the number of projects that have complied with the rule through on-site mitigation (instead of payment of a fee) and the associated reductions in on-site emissions of NO_X and PM_{10}.[349] The project information provided in Appendix B–2 of the CARB Staff Report, however, is not adequate for the EPA to determine what types of mitigation plans were implemented, to verify that those plans were implemented as proposed, or to estimate the associated emission reductions. Furthermore, it is unclear whether the District or any other state or local agency is authorized to enforce these mitigation plans. We find this documentation insufficient to credit Rule 9510 with any emission reductions toward the State's outstanding 2014 emission reduction obligation.

Third, with respect to wood stove replacements, the CARB Staff Report explains that the District implements a voluntary wood stove replacement program that provides funding for residents to replace less efficient wood stoves with more efficient gas-burning devices.[350] CARB also notes that the District has provided a list of wood stoves replaced through this program as of December 31, 2013, together with documentation of the calculation methodologies and related emission factors that it used to calculate the direct $PM_{2.5}$ emission reductions achieved by these wood stove replacements.[351] All wood stoves are installed by a District contracted retailer, with pre- and post-installation photographs provided to the District. Old wood or pellet inserts/stoves are removed and surrendered to a licensed recycling/dismantling facility within 60 days of installation.[352] We find this documentation adequate to credit the District's wood stove replacement program with 0.1 tpd of direct $PM_{2.5}$ emission reductions toward the State's outstanding 2014 emission reduction obligation.

Fourth, with respect to District-funded incentive programs, CARB provided a list of stationary and portable agricultural engines and off-road agricultural equipment that were repowered, retrofitted with controls, or replaced with newer equipment through incentive funds disbursed by the District pursuant to the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program). Specifically, the CARB Staff Report documents the State's bases for concluding that a total of 824 incentive projects implemented in the SJV between January 2009 and December 2013 in accordance with specified portions of the Carl Moyer Program Guidelines have achieved a total of 1.8 tons per day (tpd) of NO_X emission reductions and 0.1 tpd of $PM_{2.5}$ emission reductions in the SJV, which may be credited toward the State's 2014 emission reduction commitment.[353] The EPA previously reviewed the identified portions of the Carl Moyer Program Guidelines and found that they adequately address the EPA's recommended integrity elements for economic incentive programs.[354] We find this documentation sufficient to credit these District-funded projects with 1.8 tpd of NO_X emission reductions and 0.1 tpd of direct $PM_{2.5}$ emission reductions toward the State's outstanding 2014 emission reduction obligation.

Fifth, with respect to SJVUAPCD's Rule 9410 (''Employer Based Trip Reduction''), CARB submitted this rule as adopted December 2009 to the EPA as a revision to the California SIP on May 17, 2010, and on December 11, 2015, the EPA fully approved the rule into the SIP.[355] Accordingly, the emission reductions that the State and District have attributed to this rule (0.3 tpd of NO_X emission reductions) are creditable toward the State's outstanding 2014 emission reduction obligation. As part of the EPA's proposed action on Rule 9410, the EPA evaluated the District's estimates of emission reductions achieved by the rule and found the District's calculations to be technically sound and

[341] 76 FR 16696 (March 25, 2011).

[342] 2008 $PM_{2.5}$ Plan TSD at pp. 93–94, Table F–4 (September 30, 2011); *see also* CARB Staff Report, Appendix B at p. B–7 and Table B–8.

[343] 75 FR 68294 at 68295 (November 5, 2010).

[344] CARB Staff Report, Appendix B at p. B–7.

[345] *Id.* at p. B–8, Table B–8.

[346] 76 FR 26609 (May 9, 2011).

[347] 2008 $PM_{2.5}$ Plan TSD at pp. 100–101; *see also* CARB Staff Report, Appendix B at pp. B–6 and B–7.

[348] 76 FR 26609 at 26612–26613 (May 9, 2011).

[349] CARB Staff Report at p. B–6, B–7 (referencing list of projects in Appendix B–2).

[350] *Id.* at pp. B–5.

[351] *Id.* at pp. B–5, B–6 and Appendix B–1.

[352] *See* SJVAPCD Burn Cleaner Voucher Guidelines, dated December 2014, available at: *http://valleyair.org/grants/documents/burncleaner/2014/BC_Guidelines.pdf*; and SJVAPCD Burn Cleaner Voucher Application—Phase 1, dated December 2014, available at: *http://valleyair.org/grants/documents/burncleaner/2014/BC_VoucherApp.pdf*.

[353] CARB Staff Report, pp. B–9 to B–12; Technical Clarifications at 2–4; and Revised Appendix B–3.

[354] The specified portions of the guidelines that apply to the identified projects are contained in The Carl Moyer Program Guidelines, Approved Revision 2005; The Carl Moyer Program Guidelines, Approved Revision 2008; and The Carl Moyer Program Guidelines, Approved Revision 2011. *See* CARB Staff Report at Table B–10. EPA has reviewed these portions of the Carl Moyer Program Guidelines and found that they adequately address EPA's recommended integrity elements for economic incentive programs. 79 FR 29327 (May 22, 2014); *see also* 80 FR 51147 (August 24, 2015).

[355] EPA, Final rule, ''Approval and Promulgation of Implementation Plans; California; San Joaquin Valley Unified Air Pollution Control District; Employer Based Trip Reduction Programs,'' pre-publication notice signed December 11, 2015.

generally consistent with the planning assumptions in the 2008 $PM_{2.5}$ Plan.[356]

Sixth, with respect to SJVUAPCD's Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters''), the EPA approved this rule as adopted October 2008 into the California SIP on November 10, 2009 [357] and credited the rule with 1.08 tpd of direct $PM_{2.5}$ emission reductions in 2014 as part of the attainment demonstration in the 2008 $PM_{2.5}$ Plan.[358] In the CARB Staff Report, the State explained that it now has documentation of additional direct $PM_{2.5}$ emission reductions achieved by this rule based on an updated methodology for calculating emission reductions from its curtailment program. Specifically, the District reviewed ambient air quality data for a more recent period (2009–2013) to determine the number of ''No Burn'' days that would have been required under the mandatory curtailment level (30 $\mu g/m^3$) in the October 2008 version of Rule 4901. This updated air quality data resulted in a larger number of ''No Burn'' days compared to the District's prior calculation, which was based on 2006 air quality data.[359] We find this documentation adequate to credit Rule 4901 with 1.3 tpd of direct $PM_{2.5}$ emission reductions toward the State's outstanding 2014 emission reduction obligation.

Seventh, with respect to State Funded Incentive-Based Emission Reduction Measures, CARB submitted the ''Report on Reductions Achieved from Incentive-based Emission Reduction Measures in the San Joaquin Valley'' (Emission Reduction Report) to the EPA as a revision to the California SIP on November 17, 2014,[360] and on August 24, 2015, the EPA proposed to fully approve this report into the SIP.[361] As part of this proposal, the EPA evaluated the State's demonstration that specified portions of the Carl Moyer Program and Prop 1B Program guidelines adequately address the EPA's recommended integrity elements for economic incentive programs and that the identified projects funded pursuant to these guidelines achieved 7.8 tpd of NO_X emission reductions and 0.2 tpd of direct $PM_{2.5}$ emission reductions by the beginning of 2014.[362] Upon final approval of this demonstration into the California SIP, these emission reductions would be creditable toward the State's 2014 emission reduction obligation. Thus, final action by the EPA to fully approve the Emission Reduction Report before or concurrent with our final action on the 2015 $PM_{2.5}$ Plan would suffice to credit these state-funded projects with 7.8 tpd of NO_X emission reductions and 0.2 tpd of direct $PM_{2.5}$ emission reductions toward the State's outstanding 2014 emission reduction obligation.

Eighth, with respect to CARB's Cleaner In-Use Heavy Duty Trucks measure (also called the Truck and Bus Regulation and Drayage Truck Regulation), the EPA approved these rules as adopted September 2011 into the California SIP on April 4, 2012 [363] and credited the rules with 1.1 tpd of NO_X emission reductions and 1.7 tpd of direct $PM_{2.5}$ emission reductions in 2014 as part of the attainment demonstration in the 2008 $PM_{2.5}$ Plan.[364] In the CARB Staff Report, the State explained that it now has documentation of additional NO_X and direct $PM_{2.5}$ emission reductions achieved by these rules by the beginning of 2014, based on current compliance reports indicating that diesel particulate filters (DPFs) are more efficient than original estimates and that a larger than expected number of truck and bus owners had purchased new vehicles (which are cleaner than retrofits) rather than installing retrofit DPFs.[365] We find this documentation adequate to credit CARB's Cleaner In-Use Heavy Duty Trucks measure with 11.5 tpd of NO_X emission reductions and 0.1 tpd of direct $PM_{2.5}$ emission reductions toward the State's outstanding 2014 emission reduction obligation.

Finally, with respect to CARB's Portable Equipment Registration Program (PERP) and Portable Engine Airborne Toxic Control Measure (Portable Engine ATCM), CARB adopted these programs in 1997 and 2004, respectively, to reduce pollution by requiring the removal of uncertified engines from the registered fleet of nonroad engines operating in California.[366] The EPA did not credit either of these programs with emission reductions as part of the attainment demonstration in the 2008 $PM_{2.5}$ Plan.[367] On December 6, 2012, the EPA granted California's request for authorization under CAA section 209(e)(2) to implement both the PERP and the Portable Engine ATCM.[368] On August 14, 2015, CARB submitted these measures to the EPA for SIP approval and on November 12, 2015, the EPA proposed to approve both measures as revisions to the California SIP.[369] Upon final approval of these measures into the SIP, their requirements will be federally enforceable and the associated emission reductions will be creditable for attainment planning purposes in the SJV. Thus, final action by the EPA to fully approve the PERP and the Portable Engine ATCM before or concurrent with our final action on the 2015 $PM_{2.5}$ Plan would suffice to credit these measures with 2.5 tpd of NO_X emission reductions and 0.2 tpd of $PM_{2.5}$ reductions toward the State's outstanding 2014 emission reduction obligation.

According to the CARB Staff Report, implementation of these control measures resulted in NO_X emission reductions that exceeded the State's outstanding NO_X commitment by 13.9 tpd by the beginning of 2014.[370] Citing air quality modeling conducted as part of the 2008 $PM_{2.5}$ Plan, CARB stated that a reduction of 9 tpd of NO_X emissions provides an air quality improvement equivalent to a 1 tpd reduction in directly emitted $PM_{2.5}$. On this basis, CARB concluded that an 8.1 tpd portion of the 13.9 tpd of surplus NO_X reductions achieved through implementation of the identified State and District measures adequately covered the small shortfall (0.9 tpd) in required reductions of direct $PM_{2.5}$.[371]

Table 7 identifies the State and District measures that the EPA is proposing to credit toward the State's outstanding 2014 emission reduction obligations, the amount of SIP-creditable emission reductions for each measure, and the 9:1 NO_X for $PM_{2.5}$ trading ratio [372] calculation that the EPA is proposing to accept for this purpose. The total amount of SIP-creditable NO_X emission reductions associated with the identified control measures (25.4 tpd) exceeds the State's outstanding NO_X emission reduction commitment (12.9

[356] 80 FR 51153 (August 24, 2015).

[357] 74 FR 57907 (November 10, 2009).

[358] 2008 $PM_{2.5}$ Plan TSD at p. 93, Table F–4 (September 30, 2011); *see also* 76 FR 69896 at 69921, Table 1 (November 9, 2011).

[359] 2015 $PM_{2.5}$ Plan, Technical Clarifications, p. 1; and CARB Staff Report, Appendix B, p. B–7.

[360] CARB Staff Report, Appendix B at p. B–2.

[361] 80 FR 51147 (August 24, 2015).

[362] *Id.*

[363] 77 FR 20308 (April 4, 2012).

[364] 2008 $PM_{2.5}$ Plan TSD, Table F–8, p. 99 (September 30, 2011).

[365] CARB Staff Report, Appendix B, pp. B–2 to B–4.

[366] *Id.* at pp. B–4, B–5 and Technical Clarifications, p. 3.

[367] 2008 $PM_{2.5}$ Plan TSD, Table F–8, p. 99 (September 30, 2011).

[368] 77 FR 72846 and 77 FR 72851 (December 6, 2012).

[369] Letter dated August 14, 2015, from Richard W. Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, with attachments. 80 FR 69915 (November 12, 2015).

[370] CARB Staff Report at pp. 21, 22.

[371] *Id.*

[372] We use ''trading ratio'' in this action to refer to the extent to which reductions of one pollutant are substituted for necessary reductions of another pollutant.

tpd) by 12.5 tpd.[373] We believe the technical bases for a 9:1 NO_X for $PM_{2.5}$ trading ratio are generally sound and have therefore used this trading ratio to credit the State with 1 additional tpd of $PM_{2.5}$ emission reduction (based on 9 tpd of ''excess'' NO_X emission reductions) toward its outstanding 2014 commitment. In evaluating the interpollutant trading used for the aggregate commitments (as well as for Reasonable Further Progress and for Motor Vehicle Emissions Budgets for conformity), the EPA considered the regulatory basis for allowing interpollutant trading, 24-hour and annual averaging times, the pollutant trading direction, the geographical extent of emissions, the conservativeness and the numerical stability of the ratio, and the geographical variation of the trading ratio. For further discussion of our evaluation of the 9:1 NO_X to $PM_{2.5}$ trading ratio for purposes of the aggregate commitment, please *see* section IV.C of the EPA's ''Technical Support Document for EPA's Evaluation of Interpollutant Trading Ratios For Fine Particulate Matter Emissions in the San Joaquin Valley Air Pollution Control District,'' January 2016 (''Interpollutant Trading Ratios TSD'').

TABLE 7—2008 $PM_{2.5}$ PLAN AGGREGATE COMMITMENT—EPA PROPOSED EMISSION REDUCTION CREDITS FOR MEASURES IN CARB COMPLIANCE DEMONSTRATION

Measure	2014 emission reductions (annual average tpd)	
	NO_X	Direct $PM_{2.5}$
Rule 4320 (Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater than 5.0 MMBtu/hr)	1.8	0.0
Rule 9510 (Indirect Source Review)	0.0	0.0
Woodstove Replacements	0.0	0.1
District Funded Incentive-Based Emission Reduction Measures	1.5	0.1
Rule 9410 (Employer Based Trip Reduction)	0.3	0.0
Rule 4901 (Wood Burning Fireplaces and Wood Burning Heaters)	0.0	1.3
State Funded Incentive-Based Emission Reduction Measures	7.8	0.2
CARB Cleaner In-Use Heavy Duty Trucks Measure	11.5	0.1
CARB Portable Equipment Registration Program (PERP) and Portable Engine ATCM	2.5	0.2
Total SIP-Creditable Emission Reductions from State and District Measures	25.4	2.0
NO_X to $PM_{2.5}$ Emissions Equivalence (9:1)	−9.0	1.0
Total Emission Reductions Achieved	16.4	3.0

In sum, the CARB Staff Report demonstrates that implementation of State and District measures achieved a total of 16.4 tpd of NO_X emission reductions and 3.0 tpd of direct $PM_{2.5}$ emission reductions that have not previously been credited as part of the attainment demonstration in the 2008 $PM_{2.5}$ Plan and that may, therefore, be credited toward the State's outstanding obligation to achieve 12.9 tpd of NO_X emission reductions and 3.0 tpd of direct $PM_{2.5}$ emission reductions by the beginning of 2014.

Based on these evaluations, we propose to determine that California has complied with all requirements and commitments pertaining to the SJV area in the implementation plan.

4. Demonstration That the Implementation Plan Includes the Most Stringent Measures

We interpret this criterion to mean that the State must demonstrate to the EPA's satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state, or achieved in practice in any state, and can feasibly be implemented in the area.

As discussed above in section V.D, because of the substantial overlap in the source categories and controls evaluated for BACM and those evaluated for MSM, we present our evaluation of the 2015 $PM_{2.5}$ Plan's provisions for including MSM alongside our evaluation of the Plan's provisions for implementing BACM for each identified source category. For the reasons provided in section V.D and further in the EPA's SJV Rules TSD, we propose to determine that the 2015 $PM_{2.5}$ Plan provides for the implementation of MSM for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors as expeditiously as practicable, in accordance with the requirement in CAA section 188(e).

5. Demonstration of Attainment by the Most Expeditious Alternative Date Practicable

Section 189(b)(1)(A) of the CAA requires that each Serious area plan include a demonstration (including air quality modeling) that the plan provides for attainment of the $PM_{2.5}$ NAAQS by the applicable attainment date or, where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by that date is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable. We discuss below our evaluation of the modeling approach in the Plan, the State's basis for excluding one 24-hour data point from the modeling analysis, and the control strategy in the Plan for attaining the 1997 annual and 24-hour $PM_{2.5}$ NAAQS by the most expeditious alternative dates practicable.

Evaluation of Air Quality Modeling Approach and Results

The EPA's $PM_{2.5}$ modeling guidance[374] (''Modeling Guidance'' and

[373] As explained in this section, we find CARB's documentation insufficient to credit Rule 9510 with any emission reductions toward the State's outstanding 2014 emission reduction obligation and, therefore, do not entirely agree with CARB's conclusion that it achieved 13.9 tpd of NO_X emission reductions in excess of its outstanding commitments. The difference between the 25.4 tpd of NO_X emission reductions achieved by the control measures identified in Table 7 and the State's outstanding 12.9 tpd NO_X emission reduction commitment is 12.5 tpd of ''excess'' NO_X emission reductions.

[374] ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional

''Modeling Guidance Update'') recommends that a photochemical model, such as CAMx or CMAQ, be used to simulate a base case, with meteorological and emissions inputs reflecting a base case year, to replicate concentrations monitored in that year. The model application to the base case year undergoes a performance evaluation to ensure that it satisfactorily agrees with concentrations monitored in that year. The model may then be used to simulate emissions occurring in other years required for a plan, namely the base year (which may differ from the base case year) and future year.[375] The modeled response to the emission changes between those years is used to calculate Relative Response Factors (RRFs), which are applied to the design value in the base year to estimate the projected design value in the future year for comparison against the NAAQS. Separate RRFs are estimated for each chemical species component of $PM_{2.5}$, and for each quarter of the year, to reflect their differing responses to seasonal meteorological conditions and emissions. Since each species is handled separately, before applying an RRF the base year design value must be speciated using available chemical species measurements, that is, each day's measured $PM_{2.5}$ comprising the design value must be split into its species components. The Modeling Guidance provides additional detail on the recommended approach.[376]

The attainment demonstration in the 2015 $PM_{2.5}$ Plan is based on modeling performed for the 2008 $PM_{2.5}$ Plan, but that modeling is used in a streamlined way, by employing scaling. The attainment demonstration approach in the 2015 $PM_{2.5}$ Plan is covered in its Chapter 4 (''Classification and Attainment'') and Appendix F (''Attainment Demonstration''), with several further details in Appendix A (''Weight of Evidence Analysis'') of the CARB Staff Report. For the modeling used in this Plan, the base case year was 2000, the base year was 2012, and the future years were 2018 and 2020 for the 24-hour and annual $PM_{2.5}$ standards, respectively. CARB scaled the results from modeling performed for the 2008 $PM_{2.5}$ Plan, assuming the same relative response to emission changes applies in the time frame for the current Plan. Starting from the RRFs from the 2008 $PM_{2.5}$ Plan, which reflect the emission changes from the base year to the future year in that plan (2005 to 2014), CARB scaled those RRFs to reflect the current 2015 $PM_{2.5}$ Plan's base year to future year emission changes (2012 to 2020 for the annual standard, and 2012 to 2018 for the 24-hour standard).

The formula in the 2015 $PM_{2.5}$ Plan [377] for scaling an RRF is based on the definition of an RRF as (modeled future concentration)/(modeled base year concentration), and on the assumption that the modeled percent change in concentration per percent change in emissions is the same for the 2015 $PM_{2.5}$ Plan as it was for the 2008 $PM_{2.5}$ Plan. As shown in section IV.A of the EPA's General TSD for this action, these assumptions lead to the Plan formula. Since the RRF includes the modeled effect of emission changes, accounting for their temporal and spatial distribution and their chemistry, the scaling approach used in the 2015 $PM_{2.5}$ Plan differs from a simple ''rollback'' scaling (which would merely assume that the percent concentration change is identical to the percent emissions change).

CARB's procedure for using emissions from the two plans in the RRF scaling formula differed to some extent between the two plans due to data availability, even though ideally they would be treated in the same way. The reason the scaling is being done rather than new modeling is that modeling inventories were not available for the base and future years of the 2015 $PM_{2.5}$ Plan. Only the planning inventories are available; they cover all the source categories, but do not reflect the allocation of the emissions to all the grid squares in the modeling domain and to all the hours of the year, a considerable undertaking necessary for input to the model. Absent the future modeling inventories, the most consistent way to perform the scaling would be to use planning inventories from both the new and old plans. Because the scaling is done for each chemical species, the inventories used should also be speciated using the same procedure, by applying speciation profiles for the various emission source categories. Unfortunately, the old speciation profiles for the 2008 $PM_{2.5}$ Plan were not available, so the planning inventory from the 2008 $PM_{2.5}$ Plan could not be speciated in the same way as the 2015 $PM_{2.5}$ Plan planning inventory could. Therefore, CARB used the modeling inventory from the 2008 $PM_{2.5}$ Plan, which did have a speciation procedure comparable to that available for the 2015 $PM_{2.5}$ Plan planning inventory. In sum, in calculating the RRF scaling factors, CARB used the modeling inventory to compute percent emission changes for the 2008 $PM_{2.5}$ Plan and used the planning inventory for emission changes for the 2015 $PM_{2.5}$ Plan.[378] [379]

CARB's modeling domain is somewhat larger than the SJV nonattainment area, so emission totals differ between the modeling inventory and the planning inventory. But we expect that percent changes are comparable because both the modeling inventories and planning inventories reflect emissions from the same types of sources and in similar proportions. The inventories also reflect similar controls, for example statewide motor vehicle emissions controls, where motor vehicles are the main source of NO_X. We also expect the ratios of the percent changes, *i.e.,* the RRF scaling factors themselves, to be comparable given discrepancies between the modeling and planning inventories would typically be similar for the two plans used in the ratio, and hence canceled out to an extent.

The 2015 $PM_{2.5}$ Plan provided several bases to support the use of a scaling approach premised on the 2008 $PM_{2.5}$ Plan model response. The base case in the previous modeling was based on extensive measurements during the 2000 CRPAQS study,[380] and the underlying meteorological conditions leading to high $PM_{2.5}$ concentrations in the 2000–2001 winter were similar to those in the 2013–2014 winter, including persistent pressure ridges, surface inversions, cool temperatures,

Haze,'' EPA–454/B–07–002, April 2007 (''Modeling Guidance''); and ''Update to the 24 Hour $PM_{2.5}$ NAAQS Modeled Attainment Test,'' Memorandum from Tyler Fox, Air Quality Modeling Group, OAQPS, EPA to Regional Air Program Managers, EPA, June 28, 2011 (''Modeling Guidance Update'').

[375] In this section, we use the terms ''base case,'' ''base year'' or ''baseline,'' and ''future year'' as described in section 3.5 of the EPA's Modeling Guidance. The ''base case'' modeling simulates measured concentrations for a given time period, using emissions and meteorology for that same year. The modeling ''base year'' (which can be the same as the base case year) is the emissions starting point for the plan and for projections to the future year, both of which are modeled for the attainment demonstration. *See* Modeling Guidance at pp. 33–34. Note that CARB sometimes uses ''base year'' synonymously with ''base case'' and ''reference year'' instead of ''base year.''

[376] Modeling Guidance Update at 43 *ff.*

[377] 2015 $PM_{2.5}$ Plan, Chapter 4, p. 4–8, and Appendix F, p. F–4.

[378] 2015 $PM_{2.5}$ Plan, Appendix F, p. F–4.

[379] Modeling the ambient $PM_{2.5}$ components of elemental carbon (EC) and organic carbon (OC) and geological material requires emissions for those, derived from speciation profiles of the various emission source categories. The RRF scaling also requires separate EC and OC emissions. But planning inventories, such as that available for the 2008 plan, generally report only direct $PM_{2.5}$ emissions, the total of these species.

[380] 2000 California Regional Particulate Air Quality Study (CRPAQS); descriptive documents available on CARB's ''Central California Air Quality Studies'' Web site at *http://www.arb.ca.gov/airways.*

and low winds.[381] Also, the 2004–2006 $PM_{2.5}$ species composition data that CARB used for speciating $PM_{2.5}$ concentrations in the 2008 $PM_{2.5}$ Plan show a similar composition to 2011–2013 speciation measurements that CARB used in the 2015 $PM_{2.5}$ Plan to speciate design values prior to applying RRFs, as seen in composition pie charts for Bakersfield, Fresno, Modesto, and Visalia.[382]

These observations indicate that the 2013 $PM_{2.5}$ design values for the current 2015 $PM_{2.5}$ Plan would respond in a way similar to the 2008 $PM_{2.5}$ Plan modeling. An alternative would have been to use modeling from the 2012 $PM_{2.5}$ Plan, which had a 2007 meteorology and emissions base case, which is more recent than that in the 2008 $PM_{2.5}$ Plan. However, it modeled only the first and fourth quarters, the only quarters needed to address the 24-hour NAAQS; the 2008 $PM_{2.5}$ Plan modeled the entire year, and so was suitable for assessing both the 24-hour and the annual $PM_{2.5}$ NAAQS.

CARB calculated an RRF from the scaling formula using the concentration of each $PM_{2.5}$ chemical species, with emissions from the corresponding precursor. CARB used percent changes in emissions of NO_X, SO_X, Organic Carbon (OC), Elemental Carbon (EC), and other (direct $PM_{2.5}$ less OC and EC), to scale the RRF for the corresponding ambient $PM_{2.5}$ component: Nitrate (NO_3^-), sulfate (SO_4^{-2}), OC, EC, and geological material (also called ''other'' or ''dust''). For the ammonium component, which is present in ammonium nitrate and ammonium sulfate, a choice must be made as to which precursor emissions, either NO_X or SO_2, should be used in scaling ammonia; CARB used NO_X.

This is in line with information in the Plan indicating that ammonium nitrate formation responds far more to NO_X emission changes than to ammonia changes. The Plan also noted that sulfate is a much smaller ambient component than nitrate, so that ammonium scales more with NO_X than with SO_2.[383] Conceivably some combination of precursor emissions could have been used for scaling ammonium, but that would require a plausibility argument about how to reflect the actual chemistry involved, a complication that would obscure both the relative simplicity of direct scaling and the more comprehensive consideration of chemistry already present in the modeling being scaled. Another point about the choice of NO_X is that ammonium concentrations were independent of ammonia emissions, since the latter was not used, and so inherently cannot respond to increases or decreases of ammonia that occur during the planning period.

As discussed in section V.C of this notice, modeling for the 2012 $PM_{2.5}$ Plan showed that there is a small ambient response to ammonia changes. Additionally, annual average ammonia emissions in the planning inventory increase by 8.6% from 2012 to 2020, which suggests that the ammonium contribution to projected design values may be higher than stated in the Plan. However, this is of little concern since the pre-scaled RRFs for ammonium, nitrate, and sulfate were based on actual modeling for the 2008 $PM_{2.5}$ Plan; they take into account the atmospheric chemistry and the ambient effects due to ammonia changes during 2005–2014, when the annual average ammonia emissions increased by 18.1%.

Aside from the RRFs themselves, the procedure that CARB followed in the 2015 $PM_{2.5}$ Plan for projecting design values is consistent with the recommendations in the Modeling Guidance. The steps included using daily speciation data and the SANDWICH approach[384] to split daily measured $PM_{2.5}$ concentrations into their chemical components, taking quarterly averages (of all days for the annual standard, and of the highest 10% or so of days for the 24-hour standard), applying RRFs to get future component concentrations, summing to total $PM_{2.5}$, and finally averaging over quarters and years to estimate the future design value.

Two aspects of the Plan's approach to modeling differ from the Modeling Guidance recommendations. First, for the 24-hour $PM_{2.5}$ NAAQS, the RRFs were applied to a single high value per quarter to represent the potential 98th percentile, as opposed to applying RRFs to multiple high individual days in each quarter, and then choosing the 98th percentile. The former approach is consistent with the original Modeling Guidance, before it was updated to the latter approach by the June 28, 2011 Modeling Guidance Update.[385] The latter approach is intended to allow for the shifting of high days between quarters as emission controls are applied: a day that has a concentration in the top 10% in the autumn may more strongly respond to controls and no longer be in the top 10%, while a summer day may respond less to controls and end up being in the post-control top 10%. Because winter $PM_{2.5}$ concentrations are significantly higher than those in the other seasons, such shifting is very unlikely to be an issue in the SJV.

Second, the Modeling Guidance recommends that RRFs be applied to the average of three three-year design values[386] (*e.g.* using data in 2010–2012, 2011–2013, and 2012–2014), whereas the Plan used just the single 2013 design value (2011–2013 data). The 2011–2013 period for the 2013 design value is centered on the Plan's 2012 base year, as the Modeling Guidance recommends. One reason for the longer period in EPA's recommendation is that the additional averaging provides some stability in the estimate.

Although the Plan's procedure is not entirely consistent with EPA guidance, we find it acceptable in this context given the time constraints imposed by EPA's April 2015 reclassification of the SJV area[387] and the available modeling analyses. Despite the presence of scaling at a key step, CARB's approach remains a modeled attainment demonstration as required by section 189(b)(1)(A) of the Act. It relies on photochemical modeling that EPA reviewed and approved[388] for the 2008 $PM_{2.5}$ Plan, and which remains sufficiently representative of $PM_{2.5}$ formation in the SJV.

Three other considerations give some reassurance of the acceptability of a scaling approach. First, EPA's 2014 draft modeling guidance explicitly recognizes that ''there may be plausible alternative means of calculating the relative response factors [RRFs] that can differ from the approaches recommended.''[389] While this 2014 draft guidance does not

[381] 2015 $PM_{2.5}$ Plan, Appendix F, p. F–4, and WOEA, p. A–5.

[382] 2015 $PM_{2.5}$ Plan, Appendix F, Attachment A, p. F–8 to F–10.

[383] 2015 $PM_{2.5}$ Plan, Appendix F, p. F–5.

[384] *S*ulfate, *A*djusted *N*itrate, *D*erived *W*ater, *I*nferred *C*arbonaceous mass material balance approac*h:* Modeling Guidance, p. 47; Frank, N., 2006: ''Retained Nitrate, Hydrated Sulfates, and Carbonaceous Mass in Federal Reference Method Fine Particulate Matter for Six Eastern U.S. Cities,'' J. Air Waste Management Assoc., 56, 500–511.

[385] Modeling Guidance, p. 58 and Modeling Guidance Update, p. B–2 (Steps 1, 4, and 5).

[386] Modeling Guidance, p. 22; and Modeling Guidance Update, p. B–1.

[387] 80 FR 18528 at 18530 (April 7, 2015) (noting unusually short timeframe for State's development and submission of a plan to provide for attainment of the 1997 $PM_{2.5}$ NAAQS by the Serious area attainment date, which is December 31, 2015).

[388] ''Technical Support Document for the Proposed Action on the San Joaquin Valley 2008 $PM_{2.5}$ Plan and the San Joaquin Valley Portions of the Revised 2007 State Strategy,'' EPA Region 9, November 8, 2010, for proposed approval in 75 FR 74518 (November 30, 2010); final approval was in 76 FR 69896 (November 9, 2011).

[389] ''Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze'', DRAFT December 2014, EPA OAQPS, p. 99.

specifically address the alternative of scaled RRFs, it indicates, as does the Modeling Guidance, that alternatives to the recommended procedures are acceptable where adequately supported. Second, even the recommended RRF procedure involves model sensitivity derived from one period being applied to another: RRFs are computed using a single year's modeled response to emissions changes, but are assumed to be applicable to all five years composing the average over three design values. This consideration makes the 2015 $PM_{2.5}$ Plan's application of the model response from one period to another analogous to the application more broadly envisioned by the Modeling Guidance.

Finally, while scaling itself is relatively crude, the scaling of RRFs is less so. The procedure is not a simple scaling of an emission total, but reflects the geographic and temporal distribution of the emissions sources and the emission changes, since it is based on modeling. The pattern of emission changes during the span of the 2015 $PM_{2.5}$ Plan does not exactly match the changes modeled for the span of the 2008 $PM_{2.5}$ Plan, but many of the emission reductions continue the effect of existing controls on the same types of sources, so the patterns of the emissions changes are unlikely to be very different. For example, continued vehicle NO_X emission reductions occur over much the same roadway network and direct $PM_{2.5}$ reductions from controls on wood burning are largely achieved from the same residential areas.

Late in EPA's review process, EPA and CARB found that the scaling factor for EC had been applied to the RRF for OC and the product used as the RRF for EC, and vice versa.[390] Because the original RRFs for OC were larger than those for EC, and remained so after scaling, applying the smaller EC scaled RRFs to OC made the projected OC concentration smaller than it should have been. Conversely, projected EC was larger than it should have been. Because OC has a larger ambient contribution than EC, the OC effect dominates. The net result of the EC–OC reversal is that the projected design values for the attainment demonstration were underestimated. CARB estimates that the 2020 annual design value for Madera increased from the 2015 $PM_{2.5}$ Plan's original 15.0 μg/m^3 to a corrected value of 16.2 μg/m^3,[391] which is above the 1997 annual $PM_{2.5}$ NAAQS.

However, CARB presents compelling reasons for discounting this high Madera projected 2020 annual design value. The starting point for the scaled modeling projection is the 2013 design value—the average of annual means during 2011–2013. The 2011 monitoring data included within that 2013 design value appears anomalous, as documented in the WOEA at Appendix A2 (''Assessment of the Representativeness of 2011 $PM_{2.5}$ Beta Attenuation Monitor Data from Madera'') and Attachment B to CARB's Technical Clarifications of August 12, 2015 (''Attachment B''). We refer herein to figures and tables in Appendix A2 of the WOEA as ''S.R. App. A2, Figure 2.''

EPA's regulations require that monitoring data for comparison to the NAAQS be collected using specific equipment and procedures to ensure accuracy and reliability.[392] For each NAAQS, the default monitoring equipment and the procedures for operating it are termed the Federal Reference Method (FRM); an alternative approach, termed a Federal Equivalent Method (FEM) may also be used if it is demonstrated to give results comparable to an FRM monitor. The Met One Beta Attenuation Monitor (BAM) 1020 is an example of an FEM that provides continuous hourly $PM_{2.5}$ concentrations compared to the FRM's 24-hour average $PM_{2.5}$ concentrations. This is useful for a number of purposes, including real-time forecasting for deciding when to issue public advisories and wood burning restrictions, as well as for evaluating air quality model performance. BAMs are deployed at multiple sites in the SJV, including Madera (the ''Madera-City'' site, AQS ID 06–039–2010).[393]

As described in the S.R. App. A2, 2011 was the first full year of data collected by the Madera BAM, and the concentrations were unexpectedly high in comparison with other monitoring sites, including both BAMs and FRM monitor sites. During 2011–2013, annual concentrations at Madera were some 30% higher than at Fresno, and as much as 100% higher during the summer, historically the season with the lowest $PM_{2.5}$.[394] This was unexpected because historically there has been a north-to-south increasing gradient of concentrations, with northern sites like Stockton and Merced at the low end, and southern sites like those in Bakersfield at the high end, and with central sites like Fresno somewhere in between.[395] This gradient is consistent with the greater potential for ventilation at the northern end of the SJV, nearest the opening to the ocean at the Golden Gate, and the lower ventilation at the southern end, surrounded by mountains. Madera and Fresno concentrations are highly correlated,[396] suggesting common meteorological influences at the two sites, as opposed to additional emission sources contributing at Madera.

Various checks on the monitor and its operation were made over time without affecting the high readings, but in April 2014, adjustments were made as a result of checking the zero point of the instrument using outdoor air, rather than indoor air (both are permissible; outdoor air could be more representative of the conditions the instrument normally operates under).[397] After that time, Madera concentrations shifted to lower values,[398] conformed better to the known north-south gradient,[399] and tracked closely with the monitored data from the Merced-Coffee Road site about 30 miles to the North, which is expected given the two monitors' proximity to one another and similar geographic conditions.[400] They also agreed better with measurements at a new FRM installed in July 2014 at the Madera site.[401] ARB concluded that the 2011 ''BAM data at Madera appear to be biased high due to sampling artifacts . . . not representative of air quality in the central portion of the Valley''.[402]

The 2015 $PM_{2.5}$ Plan nevertheless included the 2011 Madera data and 2013 design value in the attainment demonstration, because up until recently the issue appeared to be moot, as despite the high starting point concentration the modeling predicted a 2020 annual concentration of 15.0 μg/m^3, which attains the 1997 annual $PM_{2.5}$ NAAQS. The discovery of the EC–OC reversal described above brings the issue to the fore because there is no

[390] Letter from K. Magliano, CARB to K. Drake, EPA Region 9, August 12, 2015. *See also,* Memo to file, ''Call with California Air Resources Board regarding letter about reversal of elemental and organic carbon,'' S. Bohning, EPA Region 9, September 18, 2015.

[391] *Id.,* Attachment A (''Revised San Joaquin Valley $PM_{2.5}$ Design Values'').

[392] 40 CFR parts 53 and 58.

[393] 2015 $PM_{2.5}$ Plan, Chapter 4, Table 4–3 (''Projected 2020 Annual and 2018 24-hour Design Values''), p.4–9.

[394] S.R. App. A2, Figures 3 and 4, and Tables 1 and 2.

[395] S.R. App. A2, Figure 2.

[396] S.R. App. A2, Figure 3.

[397] ''BAM 1020 Particulate Monitor Operation Manual, BAM–1020–9800 Rev K'', Met One Instruments, Inc. 2008; Memorandum from Tim Hanley, Office of Air Quality Planning and Standards, EPA to Met One BAM Users, ''RE: Zero Tests on the Met One BAM 1020,'' October 5, 2012.

[398] S.R. App. A2, Figure 8.

[399] S.R. App. A2, Figure 9.

[400] Letter from K. Magliano, CARB to A. Steckel, EPA Region 9, August 12, 2015, Attachment B, p. 2.

[401] S.R. App. A2, Figures 12 and 13.

[402] S.R. App. A2, p.A2–9.

room for the increase it causes in the 2020 Madera design value.

The fact that 2011–2013 Madera BAM concentrations are higher than values at the Fresno FRM and other sites does not in itself prove they are incorrect; it is conceivable that unknown sources were contributing there. Also, the later agreement between the lower Madera BAM and FRM concentrations could be explained as sources that are now emitting less, or that are contributing less at the monitor due to different wind patterns. Nevertheless, the mismatch with the historical gradient pattern, the unexpectedly but only temporarily high readings that declined after an adjustment in operation, and the current lower FRM readings do suggest that the 2011 Madera concentrations were anomalous. EPA believes that the 2011–2013 readings at the Madera site are not known to be representative of air quality for Madera and not sufficiently certain to drive the SJV control strategy, or to invalidate the conclusion of the attainment demonstration that the SJV will attain the 1997 annual NAAQS in 2020.

CARB explored two alternative scenarios to estimate annual average, ambient $PM_{2.5}$ values in 2020 for the Madera site.[403] Under the first scenario, CARB substituted the 2014 design value of 15.8 μg/m^3 at the Madera site for its 2013 design value and estimated that the 2020 Madera design value would be 14.1 μg/m^3. For the second scenario, CARB substituted the annual 2011 data from the Merced-Coffee Road site, adjusted upward to reflect the typically slightly higher values at Madera, resulting in an estimated 2020 Madera design value of 14.9 μg/m^3. Both scenarios are reasonable alternatives to estimating the 2020 Madera design value for the SJV attainment planning purposes for the 1997 annual $PM_{2.5}$ NAAQS. Accordingly, the Bakersfield-Planz site, which would have a corrected 2020 design value of 15.0 μg/m^3, would become the design value monitor for the SJV, as would be expected under the historic observation of a north-to-south increasing gradient of concentrations.[404]

EPA accepts the scaled modeling approach of the attainment demonstration in the 2015 $PM_{2.5}$ Plan, which was the product of extended discussion between EPA, ARB, and SJVUAPCD. Based on our review of the modeling approach and results, we propose to conclude that the 2015 $PM_{2.5}$ Plan adequately demonstrates that the SJV area will attain the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020 and attain the 1997 24-hour $PM_{2.5}$ NAAQS by December 31, 2018. We recommend that CARB reassess the status of the modeled attainment of the 1997 24-hour and annual $PM_{2.5}$ NAAQS as part of the new modeling required for SIP revisions addressing the 2006 and 2012 $PM_{2.5}$ NAAQS.

Evaluation of Bakersfield-Planz Data Exclusion for May 5, 2013

As described in the 2015 $PM_{2.5}$ Plan, the State and District based the attainment demonstration on ambient measurements during 2011–2013.[405] The 24-hour $PM_{2.5}$ concentration of 167.3 μg/m^3 measured at the Bakersfield-Planz monitoring site (AQS ID: 06–029–0016) on May 5, 2013 was not included in the attainment demonstration analyses due to its unrepresentativeness for purposes of attainment planning for the SJV as a whole. Therefore, the modeled projections for the 2020 annual $PM_{2.5}$ design values and 2018 24-hour design values[406] and the discussion of the modeling results in Appendix F, section F.4 of the Plan are based on data that exclude the May 5, 2013 24-hour data point from the Bakersfield-Planz monitoring site.

The Plan provides an assessment of the representativeness of this data for purposes of inclusion in the attainment demonstration analyses[407] and concludes that:

''In summary, comparison of the 167.3 μg/m^3 concentration measured on May 5, 2013, to values typical for this season as well as comparison to values measured throughout the Valley on the same day, combined with the record high fugitive dust and elemental species concentrations, indicate that the monitor was impacted by microscale sources that are not representative of the neighborhood spatial scale the monitor is intended to represent. Therefore, this value is not included in modeling analysis for the San Joaquin Valley 2015 $PM_{2.5}$ Plan.''

The assessment provided in the Plan[408] based this conclusion on: (1) Representativeness of Bakersfield-Planz $PM_{2.5}$ data;[409] (2) potential fugitive dust sources affecting the Bakersfield-Planz site;[410] and (3) meteorology at the Bakersfield-Planz site.[411]

Information provided regarding the representativeness of Bakersfield-Planz data included analyses of San Joaquin Valley seasonal $PM_{2.5}$ concentrations[412] and elemental species composition.[413] The assessment provided $PM_{2.5}$ data on the highest concentrations throughout the Valley since 2000 and shows that the May 5, 2013 Bakersfield-Planz value was unusually high compared to historical trends since 2000. Further, this data point was also unusually high compared to other sites in the San Joaquin Valley on the same day.[414] The species composition analyses show that the primary content of the particulate matter was fugitive dust and that the level of the dust was over four times higher than the next highest value observed in the entire California network based on 14 years of available data. In addition, total elemental species and other chemical species were found to be unusually high.

The State and District's assessment of potential fugitive dust sources affecting the Bakersfield-Planz site was based on an evaluation of aerial photos to identify sources and field investigation by District enforcement staff.[415] The assessment found no documented dust violations at any nearby sources and identify the likely source of the dust was from the open areas immediately adjacent to the monitor, suggesting a localized microscale impact.

The third part of the assessment evaluated meteorology at the Bakersfield-Planz Monitoring Site.[416] Wind speeds on May 5, 2013 were compared to other days in May 2013 and also to other high wind days at the Bakersfield-Planz site. The wind speeds were in excess of 25 mph for over eight hours on May 5, 2013. The meteorology indicates that Bakersfield-Planz experienced a high wind event on May

[403] Letter from K. Magliano, CARB to A. Steckel, EPA Region 9, August 12, 2015, Attachment B, pp. 3–4.

[404] Note that if the unexpectedly high concentrations seen in 2011–2013 are due to real phenomena affecting air quality, then they would be expected to occur again at some point in the intervening years between now and the projected attainment year of 2020. If they do occur again, then they would influence the monitored attainment status at that time, and hence any request for SJV to be designated attainment.

[405] 2015 $PM_{2.5}$ Plan, Appendix F, p F–4.

[406] 2015 $PM_{2.5}$ Plan, Appendix F, Table F–1.

[407] 2015 $PM_{2.5}$ Plan, Appendix F, Attachment B: Assessment of the Representativeness of the $PM_{2.5}$ Value Recorded at the Bakersfield-Planz Monitoring Site on May 5, 2013.

[408] 2015 $PM_{2.5}$ Plan, Appendix F, Attachment B.

[409] 2015 $PM_{2.5}$ Plan, Appendix F, Attachment B, Section B.

[410] 2015 $PM_{2.5}$ Plan, Appendix F, Attachment B, Section C.

[411] 2015 $PM_{2.5}$ Plan, Appendix F, Attachment B, Section D.

[412] 2015 $PM_{2.5}$ Plan, Appendix F, pp. F–11 to F–13.

[413] *Id.,* pp. F–13 to F–14.

[414] *Id.,* pp. F–12 to F–13.

[415] *Id.,* pp. F–14 to F–16.

[416] *Id.,* pp. F–17 to F–18.

5, 2013 that was unusual in terms of wind speed and duration.

Overall, EPA agrees with the evidence provided that the Bakersfield-Planz monitor was affected by an unusual high wind dust event on May 5, 2013 that resulted in anomalous $PM_{2.5}$ concentrations on that day. EPA believes that it is appropriate to omit this data point from the attainment demonstration based on EPA's 2013 guidance on exceptional events.[417] Regarding the inclusion of event-affected data for attainment demonstrations, EPA's 2013 guidance says:

''An air agency incorporating the event-related concentration in a design value used for a prospective attainment demonstration might seem to need more emission reductions to attain the NAAQS by its attainment deadline than is actually the case. The EPA plans to more formally address this topic on a pollutant/NAAQS basis, the first of which will be ozone guidance in the preamble of a soon-to-be-proposed rulemaking on SIP requirements for areas designated nonattainment for the 2008 ozone NAAQS. Until the planned guidance for a pollutant and NAAQS of interest is issued, air agencies should consult with their EPA regional office if they face this situation.'' [418]

EPA reviewed $PM_{2.5}$ data in AQS for the SJV since 2010 and identified four days flagged with high wind exceptional event requests for exclusion. These $PM_{2.5}$ high wind dust events do not appear to be recurring events and their inclusion in the attainment demonstration therefore would not accurately reflect the effect of controls during more typical conditions at the Bakersfield-Planz monitoring site.[419] Based on these reviews, EPA agrees with the State's and District's assertion that the May 5, 2013 concentrations at Bakersfield-Planz were due to an unusual $PM_{2.5}$ high wind dust event that would not be appropriate to include in the attainment demonstration.

In addition to EPA's 2013 guidance on exceptional events, EPA also considered the monitoring requirements for $PM_{2.5}$. In particular, 40 CFR part 58, Appendix D, section 4.71(b) specifies for $PM_{2.5}$:

''The required monitoring stations or sites must be sited to represent area-wide air quality. These sites can include sites collocated at PAMS. These monitoring stations will typically be at neighborhood or urban-scale; however, micro-or middle-scale $PM_{2.5}$ monitoring sites that represent many such locations throughout a metropolitan area are considered to represent area-wide air quality.''

Based on the information provided in the Plan, EPA agrees that the Bakersfield-Planz concentrations on May 5, 2013 appear to have been affected by a localized event; therefore, it was neither representative of neighborhood scale concentrations, nor occurring at many locations. EPA agrees with the State and District that the May 5, 2013 concentrations at Bakersfield-Planz were not representative of area-wide, typical $PM_{2.5}$ concentrations in San Joaquin Valley.

Based on the technical analyses provided in the Plan and EPA guidance and requirements as cited in this section, EPA agrees with the State and District that the May 5, 2013 Bakersfield-Planz 24-hour $PM_{2.5}$ data point resulted from a localized, anomalous event that can be omitted from the attainment demonstration analyses.

Evaluation of Control Strategy

The attainment control strategy in the 2015 $PM_{2.5}$ Plan consists of State and District baseline measures that continue to achieve emission reductions and four additional control measures that the District either recently revised or, in one case, has committed to revise in 2016. With respect to baseline measures for stationary and area sources, the District identified the source categories under its jurisdiction and their projected emission levels in Appendix B, section B.2.2 (''Emissions Inventory Documentation'') and described each of the District measures that apply to these source categories in section B.2.2.3 of the Plan (''Control Profiles'').[420] All but one of the 55 District control measures listed in section B.2.2.3 of the Plan have been approved into the California SIP.[421]

With respect to mobile sources, the State identified the source categories and described the EMFAC2014 emission factor model used to project their future emission levels in Appendix B, sections B.2.2.4 through B.2.2.7 of the Plan.[422] As explained in section V.D of this proposed rule, in a separate rulemaking, EPA is proposing to approve CARB's submitted waiver measures into the SIP and intends to finalize that rulemaking before taking final action on the 2015 $PM_{2.5}$ Plan.

Table 8 below summarizes the emission reductions needed in the SJV to attain the 1997 24-hour and annual $PM_{2.5}$ NAAQS by the end of 2018 and 2020, respectively.

TABLE 8—SUMMARY OF DIRECT $PM_{2.5}$ AND NO_X EMISSION REDUCTIONS NEEDED FOR THE 2015 $PM_{2.5}$ PLAN ATTAINMENT DEMONSTRATION

	24-hour Standard Attainment by 2018 (tpd annual average)		Annual Standard Attainment by 2020 (tpd winter average)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
A 2012 emissions inventory [a]	61.0	318.5	66.0	332.2
B Emissions inventory after baseline measures	57.7	213.9	62.8	206.9
C Emissions inventory needed to attain	54.4	213.7	60.8	206.5
D Total emission reductions needed by attainment year (A—C)	6.6	104.8	5.2	125.7

Source: 2015 $PM_{2.5}$ Plan, CARB Staff Report, Tables 1 and 2, p. 9, except as otherwise noted.
[a] 2015 $PM_{2.5}$ Plan, Appendix B, Tables B–1 and B–2.

[417] Memorandum from Steven D. Page, Director Office of Air Quality Planning and Standards, to Regional Air Directors, I–X, ''Interim Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events,'' May 10, 2013 (''2013 Exceptional Events Guidance'').

[418] *Id.*

[419] EPA also reviewed PM_{10} data in AQS for the SJV since 2010 and identified eight days flagged with high wind exceptional event request for exclusion, which indicate that PM_{10} high wind dust events recur and should be subject to reasonable controls in accordance with the 2013 Exceptional Events Guidance.

[420] 2015 $PM_{2.5}$ Plan, Appendix B, pp. B–23 to B–31. *See also,* within this section, Table B–8 (''District Rules Included in the SIP Inventory'').

[421] *See* EPA Region 9's Web site for information on District control measures that have been approved into the California SIP, available at: *http://yosemite.epa.gov/r9/r9sips.nsf/Agency?ReadForm&count=500&state=California&cat=San+Joaquin+Valley+Unified+APCD-Agency-Wide+Provisions.* Of the District measures identified in Appendix B of the Plan, only Rule 4691 (''Vegetable Oil Processing Operations''), which limits VOC emissions from vegetable oil processing operations, is not currently approved into the California SIP. EPA approved a previous version of this rule (Rule 461.2) into the SIP on January 18, 1994 (59 FR 2535).

[422] 2015 $PM_{2.5}$ Plan, Appendix B, pp. B–31 to B–35.

The Plan identifies four District measures that will achieve additional emission reductions beyond baseline measures and contribute to expeditious attainment of the 1997 $PM_{2.5}$ NAAQS.[423] First, Rule 4308 (''Boilers, Steam Generators, and Process Heaters 0.075 to <2 MMBtu/hr''), as amended November 14, 2013, limits NO_X emissions from boilers, steam generators, and process heaters sized between 0.075 and 2 MMBtu/hr and is projected to achieve 0.0007 tpd of NO_X emission reductions by 2018 and 0.0011 tpd of NO_X emission reductions by 2020.[424] EPA approved this rule into the California SIP on February 12, 2015.[425]

Second, the District has committed to amend Rule 4692 (''Commercial Charbroiling'') in 2016 to add requirements for under-fired charbroilers, with an anticipated compliance date in 2017.[426] Rule 4692, as approved into the SIP on November 3, 2011, regulates emissions from chain-driven charbroilers but does not regulate under-fired charbroilers.[427] The District projects that its anticipated revisions to Rule 4692 to regulate under-fired charbroilers will achieve an additional 0.4 tpd of direct $PM_{2.5}$ emission reductions in 2018 and 2020.[428] EPA recently proposed to approve this commitment into the California SIP.[429]

Emission reductions of 0.4 tpd of direct $PM_{2.5}$ represent 6.1% of the total $PM_{2.5}$ emission reductions needed to attain the 1997 24-hour standard by 2018 and 7.7% of the total $PM_{2.5}$ emission reductions needed to attain the 1997 annual standard by 2020.[430] These are limited portions of the total $PM_{2.5}$ emission reductions needed for expeditious attainment of the 1997 $PM_{2.5}$ standards in the SJV. Based on the District's history of timely meeting similar rule commitments (*see* section V.E.3 of this preamble), we find that the District is capable of fulfilling this commitment. We also find that the commitment to adopt the amended rule by 2016 is for a reasonable and appropriate timeframe given the need for $PM_{2.5}$ emission reductions to attain by 2018 and 2020. Accordingly, we propose to approve this rule commitment as part of the control strategy in the 2015 $PM_{2.5}$ Plan. For a more detailed discussion of this commitment and the District's evaluations to date, *see* the EPA's SJV Rules TSD.

Third, the District projects that Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters''), as amended September 18, 2014, will achieve 2.9 tpd of direct $PM_{2.5}$ emission reductions by 2018 and 1.6 tpd of direct $PM_{2.5}$ emission reductions by 2020. Specifically, the District's 2014 rule amendment to lower the rule's ''no burn threshold'' from 30 $\mu g/m^3$ to 20 $\mu g/m^3$ (24-hour average ambient $PM_{2.5}$ concentration) for non-EPA certified, non-District registered wood burning devices is projected to achieve a winter 24-hour average of 2.2 tpd of direct $PM_{2.5}$ emission reductions by 2018 and an annual average of 1.1 tpd of direct $PM_{2.5}$ emission reductions by 2020.[431] The 2015 $PM_{2.5}$ Plan relies on Rule 4901 for an additional 0.7 tpd of direct $PM_{2.5}$ emission reductions (winter 24-hour average) by 2018 and an additional 0.5 tpd of direct $PM_{2.5}$ emission reductions (annual average) by 2020 resulting from homeowners replacing high-emitting fireplaces and stoves with low-emitting, EPA-certified devices.[432] The EPA recently proposed to approve Rule 4901 into the California SIP.[433]

Finally, the District projects that Rule 4905 (''Natural Gas-Fired, Fan-Type Residential Central Furnaces''), as amended January 22, 2015, will achieve 0.2 tpd of NO_X emission reductions by 2018 and 0.4 tpd of NO_X emission reductions by 2020.[434] This rule includes a mitigation fee option that allows manufacturers to sell non-compliant furnaces for 36-month transition periods ranging from 2015 to 2021, depending on unit type.[435] Based on information in the District's staff report on Rule 4905, the District estimates emission reductions of 0.105 tpd of NO_X per year from three of the four types of units, which have compliance dates ranging from April 1, 2015 through October 1, 2016.[436]

The EPA recently proposed to approve Rule 4905 into the California SIP.[437] Because the sale of non-compliant units is allowed to varying degrees in 2018 by manufacturers paying mitigation fees, we propose to credit Rule 4905 with 0.035 tpd of NO_X emission reductions in 2018 rather than the 0.105 tpd of emission reductions identified in the District's staff report for the rule. The amount we propose to not credit (*i.e.,* 0.16 tpd of NO_X) represents only 0.2% of the total winter average NO_X reduction from 2012 to 2018.[438] Using the 24-hour $PM_{2.5}$ sensitivity of 0.08 $\mu g/m^3$ per ton of NO_X emission reduction at the projected 2018 design value site of Bakersfield-California St., as modeled for the 2012 $PM_{2.5}$ Plan,[439] this would result in an ambient 24-hour $PM_{2.5}$ concentration increase of about 0.013 $\mu g/m^3$.[440] This represents a minimal effect on ambient $PM_{2.5}$ levels and, therefore, does not undermine the Plan's demonstration of attainment of the 1997 24-hour $PM_{2.5}$ standard by December 31, 2018.

In sum, the attainment demonstration in the 2015 $PM_{2.5}$ Plan relies on numerous State and District baseline regulations and four additional District measures that EPA has either approved or proposed to approve into the California SIP, all of which collectively are projected to achieve emission reductions sufficient for the SJV area to attain the 1997 24-hour $PM_{2.5}$ standard by 2018 and the 1997 annual $PM_{2.5}$ standard by 2020. Table 9 provides a summary of the emission reductions from the four additional District measures that we propose to credit toward the Plan's attainment control strategy.

[423] 2015 $PM_{2.5}$ Plan, CARB Staff Report, Tables 1 and 2, p. 9.

[424] 2015 $PM_{2.5}$ Plan, Chapter 7, p. 7–3 and CARB Staff Report at p. 9.

[425] 80 FR 7803 (February 12, 2015).

[426] 2015 $PM_{2.5}$ Plan, Chapter 7, section 7.1.2, p. 7–6 and SJVUAPCD Governing Board Resolution 15–4–7A (April 16, 2015) at paragraph 7.

[427] 76 FR 68103 (November 3, 2011).

[428] 2015 $PM_{2.5}$ Plan, Chapter 7 at p. 7–6.

[429] 80 FR 1816 at 1833 and 1844 (January 13, 2015).

[430] 2015 p.m.2.5 Plan, CARB Staff Report, Tables 1 and 2, p. 9, and Appendix B (''Emissions Inventory''), Tables B–1 and B–2.

[431] The District calculated these estimates using its estimates of direct $PM_{2.5}$ emission reductions for the 120-day wood burning season covered by the rule and ratios of 120/365 days and 120/180 days for the annual average and winter (24-hour) average emission reductions, respectively. *See* SJVUAPCD, ''Final Staff Report for Amendments to the District's Residential Wood Burning Program,'' Appendix B, (''Emission Reduction Analysis Amendments to Residential Wood Burning Program'') at B–12, September 18, 2014.

[432] The 0.7 tpd and 0.5 tpd emission reduction estimates assume that 14% of devices subject to Rule 4901 will be replaced by 2018 and that 20% of such devices will be replaced by 2020, respectively. For a more detailed discussion of these emission reduction estimates, *see* the EPA's SJV Rules TSD.

[433] 80 FR 58637 (September 30, 2015).

[434] 2015 p.m.2.5 Plan, CARB Staff Report, Tables 1 and 2, p. 9.

[435] SJVUAPCD, ''Final Staff Report Amendments to Rule 4905 (Natural Gas-Fired, Fan-Type Central Furnaces,'' January 22, 2015, p. 9. *See also* EPA's proposed rule on Rule 4905. 80 FR 68484 (November 5, 2015).

[436] SJVUAPCD Rule 4905 as amended January 22, 2015, Table 1 (''NO_X Emission Limits and Compliance Schedule''). *See also,* SJVUAPCD, ''Final Staff Report Amendments to Rule 4905 (Natural Gas-Fired, Fan-Type Central Furnaces,'' January 22, 2015, Appendix B, pp. B–9.

[437] 80 FR 68484 (November 5, 2015).

[438] Percent of total winter average NO_X emission reductions = 0.16 tpd/104.8 tpd = 0.2%.

[439] 2015 $PM_{2.5}$ Plan, WOEA, Table B–2 (''Modeled $PM_{2.5}$ air quality benefit per ton of valley-wide precursor emission reductions''), p. A–27.

[440] Increase in ambient 24-hour $PM_{2.5}$ concentration = (0.08 $\mu g/m^3$/ton of NO_X emission reduction) * (0.16 tpd) = 0.013 $\mu g/m^3$.

TABLE 9—SUMMARY OF EPA PROPOSED EMISSION REDUCTION CREDITS FOR ADDITIONAL DISTRICT CONTROL MEASURES NEEDED FOR THE 2015 $PM_{2.5}$ PLAN ATTAINMENT DEMONSTRATION

District control measure	Annual Standard Attainment by 2020 (tpd annual average)		24-hour Standard Attainment by 2018 (tpd winter average)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Rule 4308	0.0	0.0011	0.0	0.0007
Rule 4692	0.4	0.0	0.4	0.0
Rule 4901	1.6	0.0	2.9	0.0
Rule 4905	0.0	0.4	0.0	0.035

Source: 2015 $PM_{2.5}$ Plan, CARB Staff Report, Tables 1 and 2, p. 9.

Conclusion

As discussed above, the 2015 $PM_{2.5}$ Plan's air quality modeling demonstrates that the SJV will attain the 1997 24-hour $PM_{2.5}$ standard of 65 μg/m^3 by December 31, 2018 and the 1997 annual $PM_{2.5}$ standard of 15.0 μg/m^3 by December 31, 2020. This demonstration is based on expeditious implementation of the State's and District's BACM and MSM control strategy for stationary, area, and mobile sources in the 2015 $PM_{2.5}$ Plan, together with the District's commitment to achieve additional $PM_{2.5}$ emission reductions from under-fired charbroilers through amendments to Rule 4692. Based on these evaluations, we propose to determine that the 2015 $PM_{2.5}$ Plan provides for attainment of the 1997 24-hour and annual $PM_{2.5}$ standards by the most expeditious alternatives dates practicable, consistent with the requirements of CAA sections 189(b)(1)(A).

F. Reasonable Further Progress and Quantitative Milestones

1. Requirements for Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires nonattainment area plans to provide for reasonable further progress (RFP). In addition, CAA section 189(c) requires $PM_{2.5}$ nonattainment area SIPs to include quantitative milestones to be achieved every three years until the area is redesignated to attainment and which demonstrate reasonable further progress (RFP), as defined in CAA section 171(1). Section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Neither subpart 1 nor subpart 4 of part D, title I of the Act requires that a set percentage of emissions reductions be achieved in any given year for purposes of satisfying the RFP requirement.

RFP has historically been met by showing annual incremental emission reductions sufficient generally to maintain at least linear progress toward attainment by the applicable deadline.[441] As discussed in EPA guidance in the Addendum, requiring linear progress in reductions of direct $PM_{2.5}$ and any individual precursor in a $PM_{2.5}$ plan may be appropriate in situations where:

- the pollutant is emitted by a large number and range of sources,
- the relationship between any individual source or source category and overall air quality is not well known,
- a chemical transformation is involved (*e.g.,* secondary particulate significantly contributes to $PM_{2.5}$ levels over the standard), and/or
- the emission reductions necessary to attain the $PM_{2.5}$ standard are inventory-wide.[442]

The Addendum states that requiring linear progress may be less appropriate in other situations, such as:

- where there are a limited number of sources of direct $PM_{2.5}$ or a precursor,
- where the relationships between individual sources and air quality are relatively well defined, and/or
- where the emission control systems utilized (*e.g.,* at major point sources) will result in swift and dramatic emission reductions.

In nonattainment areas characterized by any of these latter conditions, RFP may be better represented as step-wise progress as controls are implemented and achieve significant reductions soon thereafter. For example, if an area's nonattainment problem can be attributed to a few major sources, EPA guidance indicates that ''RFP should be met by 'adherence to an ambitious compliance schedule' which is likely to periodically yield significant emission reductions of direct $PM_{2.5}$ or a $PM_{2.5}$ precursor.'' [443]

Plans for $PM_{2.5}$ nonattainment areas should include detailed schedules for compliance with emission regulations in the area and provide corresponding annual emission reductions to be realized from each milestone in the schedule.[444] In reviewing an attainment plan under subpart 4, EPA evaluates whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment. Although early implementation of the most cost-effective control measures is often appropriate, states should consider both cost-effectiveness and pollution reduction effectiveness when developing implementation schedules for their control measures and may implement measures that are more effective at reducing $PM_{2.5}$ earlier to provide greater public health benefits.[445]

Section 189(c) requires that attainment plans include quantitative milestones in order to demonstrate RFP. The purpose of the quantitative milestones is to allow periodic evaluation of the area's progress towards attainment of the NAAQS through the RFP requirements. Thus, the EPA determines an area's compliance with RFP in conjunction with determining its compliance with the quantitative milestone requirement. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every three years, when a state demonstrates compliance with the quantitative milestone requirement, it will demonstrate that RFP has been achieved during each of the relevant three years. Quantitative milestones should provide an objective means to evaluate progress toward attainment meaningfully, *e.g.,* through imposition of emission controls in the attainment plan and the requirement to quantify those required emission reductions. The CAA also requires milestone reports (due 90 days after each milestone), and these reports should include calculations and any assumptions made concerning how RFP

[441] Addendum at 42015.

[442] *Id.*

[443] Addendum at 42015.

[444] Addendum at 42016.

[445] *Id.*

has been met, *e.g.,* through quantification of emission reductions to date.[446]

The CAA does not specify the starting point for counting the three-year periods for quantitative milestones under CAA section 189(c). In the General Preamble and Addendum, EPA interpreted the CAA to require that the starting point for the first three-year period be the due date for the Moderate area plan submission.[447] In keeping with this historical approach, EPA is proposing to establish December 31, 2014 as the starting point for the first 3-year period under CAA section 189(c) for the 1997 $PM_{2.5}$ standards in the SJV. This date was the due date established in the EPA's June 2, 2014 Deadline and Classification Rule for the State's submission of any additional attainment-related SIP elements necessary to satisfy the subpart 4 Moderate area requirements for the 1997 $PM_{2.5}$ standards in the SJV area.[448] December 31, 2017 and December 31, 2020 would then be the milestone dates that the Serious Area plan must address, at minimum. The EPA believes that establishing December 31, 2017 as the first quantitative milestone date is an appropriate means for implementing the requirements of subpart 4 prospectively.

2. RFP Demonstration and Quantitative Milestones in the 2015 $PM_{2.5}$ Plan

The RFP demonstration and quantitative milestones appear in Chapter 6, section 6.3 (pp. 6–6 to 6–8) of the 2015 $PM_{2.5}$ Plan. Further discussion of the RFP demonstration, particularly with respect to ammonia, and the establishment of dates, content, and a reporting commitment for quantitative milestones, appears in CARB's Staff Report (pp. 25–26). In addition, by letter dated December 15, 2015, CARB's Executive Officer committed to submit a SIP revision to supplement the quantitative milestone portion of the 2015 $PM_{2.5}$ Plan by December 31, 2016 (''QM Letter'').[449]

The Plan estimates that emissions of direct $PM_{2.5}$, NO_X, and SO_X will decline from the 2012 base year to 2020 and states that emissions of each of these pollutants will remain below the levels needed to show ''generally linear progress'' from 2012 to 2020, the year that the Plan projects to be the earliest practicable attainment date for the 1997 annual $PM_{2.5}$ standard.[450] The Plan's emissions inventory shows that direct $PM_{2.5}$, NO_X, and SO_X are emitted by a large number and range of sources in the SJV and the emission reductions needed for these pollutants are inventory wide.[451] The District followed the procedures in the 2007 $PM_{2.5}$ Implementation Rule to calculate 2014 and 2017 RFP targets (or ''benchmark'' emission levels) for direct $PM_{2.5}$, NO_X, and SO_X and then concluded that projected emission levels for each pollutant, based on its adopted control strategy, would be below those targets in both milestone years.[452]

The BACM control strategy that provides the basis for these emissions projections is described in Chapters 5 and 7 and Appendices C and D of the Plan. For stationary and area sources, the Plan highlights several rules that are projected to contribute to attainment of the $PM_{2.5}$ standards.[453] For example, Rule 4354 (''Glass Melting Furnaces'') controls emissions of NO_X, SO_X, and PM from industrial glass manufacturing—the largest source of SO_X emissions in the San Joaquin Valley—and its emissions projections are presented in Appendix C as part of the Plan's BACM and MSM analysis.[454] Similarly, Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters'') controls emissions from residential wood burning and addresses the largest combustion source of direct $PM_{2.5}$.[455] Measures to control dust sources of direct $PM_{2.5}$ are also presented in the Plan's BACM and MSM analyses and reflected in the Plan's baseline emission projections. Examples of such measures include Rule 4550 (''Conservation Management Practices'')[456] and Rule 8061 (''Paved and Unpaved Roads'').[457] For mobile sources, the Plan lists numerous CARB regulations and discusses the key regulations that limit the emission of direct $PM_{2.5}$ and NO_X from on-road and non-road mobile sources.[458] For instance, the regulations that apply to the two largest sources of NO_X in the San Joaquin Valley—heavy, heavy-duty diesel trucks and farm equipment—are discussed in Appendix C and their emission projections are presented in the Plan's emissions inventory.[459]

With respect to ammonia, the 2015 $PM_{2.5}$ Plan projects an increase in annual average ammonia emissions from 329.5 tpd in 2012 to 358.0 tpd in 2020.[460] The Plan states that both NO_X and ammonia participate in forming ammonium nitrate (*i.e.,* secondary $PM_{2.5}$) but that NO_X emission reductions are an order of magnitude more effective at reducing ambient $PM_{2.5}$ than ammonia reductions.[461] Based on the relative insensitivity of ambient $PM_{2.5}$ levels to ammonia reductions compared to NO_X reductions, the Plan states that ammonia is not a significant precursor to ambient $PM_{2.5}$ in the SJV[462] and thus that an RFP demonstration for ammonia is not required.[463] The Plan also states that NO_X emission levels are projected to be well below the levels needed to show generally linear progress toward attainment. The CARB Staff Report provides additional analysis by converting the increase in ammonia emissions into ''NO_X equivalent'' emission levels (using a ''NO_X equivalency'' calculation method) and demonstrating that the ''NO_X equivalent'' emissions level continues to show linear progress toward attainment from 2012 to 2020.[464]

The NO_X equivalency method used in the Plan relies on the sensitivity of ambient $PM_{2.5}$ levels to decreases in ammonia emissions compared to decreases in NO_X emissions, as modeled at the Bakersfield-California monitoring site. The Plan states that in the San Joaquin Valley ammonia emission reductions are only 10% as effective as NO_X emission reductions, with a

[446] *Id.* at 42016, 42017.

[447] General Preamble at 13539, Addendum at 42016.

[448] 79 FR 31566 (June 2, 2014) (final rule establishing subpart 4 moderate area classifications and deadline for related SIP submissions) (''Classification and Deadline Rule''). Although the Classification and Deadline Rule did not affect any action that EPA had previously taken under CAA section 110(k) on a SIP for a $PM_{2.5}$ nonattainment area, EPA noted that states may need to submit additional SIP elements to fully comply with the applicable requirements of subpart 4, even for areas with previously approved $PM_{2.5}$ attainment plans, and that the deadline for any such additional plan submissions was December 31, 2014. *Id.* at 31569.

[449] Letter from R. Corey, Executive Officer, CARB to J. Blumenfeld, Regional Administrator, U.S. EPA Region 9, December 15, 2015.

[450] 2015 $PM_{2.5}$ Plan, Chapter 6, Table 6–8 (''RFP Target Demonstration (2014 and 2017)''), p. 6–8.

[451] 2015 $PM_{2.5}$ Plan, Appendix B.

[452] 2015 $PM_{2.5}$ Plan, pp. 6–6 to 6–8.

[453] 2015 $PM_{2.5}$ Plan, Chapter 7, Section 7.1.1, pp. 7–2 to 7–6.

[454] 2015 $PM_{2.5}$ Plan, Chapter 7, pp. 7–3 to 7–4 and Appendix C, p. C–102.

[455] 2015 $PM_{2.5}$ Plan, Chapter 7, p. 7–4 and Appendix C, p. C–157.

[456] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–108.

[457] 2015 $PM_{2.5}$ Plan, Appendix C, p. C–194.

[458] 2015 $PM_{2.5}$ Plan, Chapter 7, Section 7.1.3, pp. 7–6 to 7–13.

[459] 2015 $PM_{2.5}$ Plan, Appendix D, pp. D–8 to D–12 (for heavy heavy duty trucks) and D–15 (for farm equipment) and Appendix B, p. B–7.

[460] 2015 $PM_{2.5}$ Plan, Appendix B, p. B–19.

[461] *Id. See also,* 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–27, which concludes the District's analysis of the relationship between ammonia emissions and ambient $PM_{2.5}$ levels by stating that ''ammonia reductions at the Bakersfield-California site are only. . . 10% as effective as NO_X reductions.''

[462] 2015 $PM_{2.5}$ Plan, Chapter 2, section 2.6 (''Insignificant Precursors to $PM_{2.5}$ Concentrations in the Valley'').

[463] 2015 $PM_{2.5}$ Plan, CARB Staff Report, p. 26.

[464] 2015 $PM_{2.5}$ Plan, CARB Staff Report, pp. 25–26.

relative sensitivity factor of 0.1.[465] Stated alternatively, this is a 1:10 NO_X for ammonia trading ratio, *i.e.,* it takes 1 tpd of NO_X emissions to match the ambient effect of 10 tpd of ammonia in this area. The State calculates the change in ammonia emissions from the base year (2012) to each RFP milestone year[466] (2014 and 2017), and multiplies it by the trading ratio to calculate a NO_X increase equivalent to the ammonia increase, which the State then adds to the NO_X emissions inventory for each RFP milestone year to calculate the total NO_X decrease and ammonia increase expressed as ''NO_X equivalent'' emission levels.[467] The CARB Staff Report states that the total NO_X equivalent emissions levels are below the linear reductions in NO_X necessary to demonstrate RFP and, therefore, that the RFP requirement is met, despite the projected increase in the ammonia inventory.

Control measures for ammonia sources are described in Appendix C of the Plan. For example, ammonia controls resulting from Rule 4570 (''Confined Animal Facilities''), Rule 4565 (''Biosolids, Animal Manure, and Poultry Litter Operations''), and Rule 4566 (''Organic Material Composting'') are discussed at length in section C.41 of Appendix C and their emission projections are presented collectively under farming operations in the Plan's emissions inventory.[468] We discuss these control measures more fully in section V.D of this preamble (''Best Available Control Measures and Most Stringent Measures'') and in the EPA's SJV Rules TSD.

With respect to quantitative milestones, the CARB Staff Report states that the Plan identifies RFP emissions levels for direct $PM_{2.5}$, NO_X, and SO_X for 2014 and 2017 that show generally linear progress towards attaining the annual standard in 2020, and that ''[t]hese emission levels for 2017 along with the 2020 attainment emission levels serve as the quantitative milestones required under the Act.''[469] CARB addresses the projected increase in ammonia emissions over the planning period by evaluating those emissions in light of the atmospheric response to NO_X and ammonia emissions in the San Joaquin Valley area and concluding that ''the combined emission levels of NO_X and ammonia that are projected to occur through the 2020 attainment year provide for the required generally linear air quality progress.''[470] The CARB Staff Report also states California's commitment to provide letters to EPA ''reporting that the emission inventory milestones have been met and the status of any emission reduction commitments,'' and to provide these letters by March 31, 2018 for the 2017 milestone and by March 31, 2021 for the 2020 milestone.[471]

Additionally, the QM Letter contains the State's commitment to submit, by December 31, 2016, a SIP revision that supplements the quantitative milestone portion of the 2015 $PM_{2.5}$ Plan by identifying specific quantitative milestones to be achieved by the 2017 RFP milestone year and 2020 attainment year that demonstrate reasonable further progress toward timely attainment of the $PM_{2.5}$ NAAQS. The QM Letter states that this SIP revision will include the following milestones to track implementation of control measures and emissions levels at each milestone year: (1) A list of measures in the Plan's BACM/BACT and MSM control strategy and key implementation requirements through 2017 and 2020, including compliance milestones for the State's Truck and Bus Rule and the District's residential wood burning rule (Rule 4901), (2) compliance with the State's and District's enforceable commitments in the Plan by the 2017 milestone date, and (3) updated emissions inventories for both 2017 and 2020.[472] The QM Letter also states that the SIP revision will identify appropriate air quality quantitative milestones for 2017 and 2020 designed to evaluate air quality progress resulting from implementation of the Plan's control strategy, including an assessment of monitored ambient $PM_{2.5}$ concentrations and other variables affecting ambient $PM_{2.5}$ concentrations in each of those years.[473]

3. Evaluation and Proposed Actions

Reasonable Further Progress Demonstration

With respect to direct $PM_{2.5}$, NO_X, and SO_2, we agree that ''generally linear progress'' is an appropriate measure of RFP for the 1997 $PM_{2.5}$ NAAQS in the SJV area given that, as the Plan documents, direct $PM_{2.5}$, NO_X, and SO_X are emitted by a large number and range of sources in the SJV, the emission reductions needed for these pollutants are inventory wide,[474] and secondary particulates contribute significantly to ambient $PM_{2.5}$ levels in the SJV area.[475]

The 2015 $PM_{2.5}$ Plan documents the State's conclusion that all BACM, BACT, and MSM for these pollutants are being implemented as expeditiously as practicable and identifies projected levels of direct $PM_{2.5}$, NO_X, and SO_X emissions in 2014 and 2017 that reflect full implementation of the State's and District's BACM/BACT and MSM control strategy for these pollutants.[476] For example, Rule 4550 (''Conservation Management Practices'') was adopted in 2004 and its requirements to control PM_{10} emissions (including $PM_{2.5}$) from on-field crop and animal feeding operations are fully implemented.[477] These operations represent the largest dust sources of direct $PM_{2.5}$ in the San Joaquin Valley.[478] More recently, SJVUAPCD revised Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters'') in September 2014 by strengthening the District's curtailment program for residential wood burning, thereby further limiting emissions from San Joaquin Valley's largest combustion source of direct $PM_{2.5}$.[479] These rule amendments provide part of the incremental emission reductions of direct $PM_{2.5}$ from the 2014 to 2017 RFP milestone years and through the 2018 and 2020 attainment years.[480]

[465] 2015 $PM_{2.5}$ Plan, Chapter 2, p. 2–27. Note that Bakersfield-California is projected to be the design value monitor for the SJV in 2018 with respect to the 1997 24-hour $PM_{2.5}$ standard. 2015 $PM_{2.5}$ Plan, Appendix F, Table F–1 (''Projected 2018 and 2020 Design Values''), p. F–7.

[466] We use ''RFP milestone year'' to mean each year for which the Plan provides an RFP analysis and related emissions projections.

[467] That is, $(NO_X \text{ emissions})_{2017} + [(NH_3 \text{ emissions})_{2017} - (NH_3 \text{ emissions})_{2012}] * 0.1 = (\text{total } NO_X \text{ equivalent emissions})_{2017}$. Using values from the 2015 $PM_{2.5}$ Plan, the 17.5 tpd increase in ammonia emissions from 2012 to 2017 is equivalent to a 1.8 tpd increase in NO_X emissions, as follows: 235.7 + [347.0 − 329.5]*0.1 = 237.5 tpd. *See* CARB Staff Report, p. 26, Table 12.

[468] 2015 $PM_{2.5}$ Plan, Appendix C, Section C.41, pp. C–240 to C–281 and Appendix B, p. B–17.

[469] 2015 $PM_{2.5}$ Plan, CARB Staff Report, p. 26.

[470] *Id.*

[472] QM Letter, pp. 1–2.

[473] *Id.,* p. 2.

[474] 2015 $PM_{2.5}$ Plan, Appendix B.

[475] 2015 $PM_{2.5}$ Plan, Chapter 5, Section 5.4.1 (''Significance Determination Approach'').

[476] 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.3, and Appendix B. *See also* our discussion of BACM/BACT in section V.D of this proposed rule.

[477] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–106 to C–107.

[478] 2015 $PM_{2.5}$ Plan, Chapter 5, Table 5–2, pp. 5–7 to 5–8. *See also* 2015 $PM_{2.5}$ Plan, Appendix B, p. B–2,

[479] 2015 $PM_{2.5}$ Plan, Chapter 7, p. 7–4 and Appendix C, p. C–156. *See also* 2015 $PM_{2.5}$ Plan, Appendix B, p. B–2.

[480] 2015 $PM_{2.5}$ Plan, CARB Staff Report, p. 9.

The Truck and Bus Regulation and Drayage Truck Regulation became effective in 2011 and have rolling compliance deadlines based on truck engine model year. These and other regulations applicable to heavy duty diesel trucks will continue to reduce emissions of diesel particulate matter and NO_X through the RFP and attainment planning years.[481] For instance, model year 1994 and 1995 heavy heavy duty diesel truck engines must be upgraded to meet the 2010 model year truck engine emission standards by 2016, and model year 1996–1999 engines must by upgraded by January 1, 2020.[482] The emission reductions from these rules represent the largest portion of the NO_X emission reductions upon which the Plan's attainment and RFP demonstrations rely.[483] With respect to SO_X emissions, Rule 4354 (''Glass Melting Furnaces'') was amended in May 2011, establishing SO_X emission limits with compliance deadlines through January 1, 2014.[484] This rule will achieve emission reductions through the 2017 RFP milestone year and 2018 and 2020 attainment years. As explained in section V.D of this preamble, we are proposing to find that the State and District are implementing these BACM, BACT and MSM provisions for the 1997 $PM_{2.5}$ NAAQS as expeditiously as practicable.

Additionally, the method used to calculate RFP target (or ''benchmark'') emission levels for direct $PM_{2.5}$, NO_X, and SO_2 is generally consistent with the method provided in the 2007 $PM_{2.5}$ Implementation Rule (40 CFR 51.1009(f)). We note that the 2015 $PM_{2.5}$ Plan calculates the 2014 and 2017 RFP benchmark emission levels using 2020 attainment emissions levels that are not consistent with the attainment targets presented in CARB's Staff Report.[485] We have, however, re-calculated the RFP benchmark emissions levels for these years using the attainment targets found in the CARB Staff Report,[486] as shown in Table 10 below. The EPA's calculations indicate that the Plan's projected 2014 and 2017 emission levels for direct $PM_{2.5}$, NO_X, and SO_X are below the RFP benchmark emission levels for these years.[487]

TABLE 10—EPA CALCULATION OF 2015 $PM_{2.5}$ PLAN RFP DEMONSTRATION

[tpd, based on annual averages]

	2012 Emissions inventory [a]	2020 Attainment target [b]	Annual incremental reduction [c]	2014 RFP Benchmark	2014 Projected emissions [d]	2017 RFP Benchmark	2017 Projected emissions [d]
Direct $PM_{2.5}$	66.0	60.8	0.65	64.7	63.3	62.75	62.5
NO_X	332.2	206.5	15.71	300.78	284.2	253.63	235.7
SO_X	8.1	7.8	0.04	8.03	7.4	7.91	7.6

[a] 2015 $PM_{2.5}$ Plan, Chapter 6, Table 6–6, p. 6–7.
[b] 2015 $PM_{2.5}$ Plan, CARB Staff Report, Table 1, p. 9.
[c] Annual incremental reduction = (2012 emissions inventory − 2020 attainment target)/(2020 − 2012).
[d] 2015 $PM_{2.5}$ Plan, Chapter 6, Table 6–8, p. 6–8.

With respect to ammonia, the 2015 $PM_{2.5}$ Plan shows an 8.6% increase in total ammonia emissions during the 2012 to 2020 period.[488] Unlike the wide range of sources emitting direct $PM_{2.5}$, NO_X, and SO_2 in the Valley, emissions of ammonia are almost entirely from three source categories: confined animal facilities (CAFs), fertilizer application, and composting, with more than half of all emissions coming from CAFs.[489] Collectively, these three categories emit 95% of all ammonia emissions in the 2012 annual average base year inventory.[490]

Several District measures already in the SIP for the SJV area control ammonia emissions from two of these source categories. District Rule 4570 (''Confined Animal Facilities'') required implementation of control measures to reduce VOCs in 2008 and required full compliance by affected sources by mid-2012.[491] Many of the VOC control measures have an ammonia co-benefit, and the District estimates a 100 tpd reduction in ammonia from this rule, which have been accounted for in the emissions inventory of the 2015 $PM_{2.5}$ Plan.[492] The Plan also indicates that implementation of District Rule 4565 (''Biosolids, Animal Manure, and Poultry Litter Operations''), adopted March 15, 2007,[493] and Rule 4566 (''Organic Material Composting Operations''), adopted August 18, 2011,[494] resulted in some ammonia reductions, but these reductions are not reflected in the base year or baseline inventories. As discussed in section V.D of this proposed rule, we are proposing to determine that each of these measures implements BACM and MSM for the control of ammonia as a precursor to $PM_{2.5}$ in the San Joaquin Valley for purposes of the 1997 $PM_{2.5}$ NAAQS.

The statement in the Plan that ammonia is an insignificant precursor in the SJV area is based on the State's analysis of the relative sensitivity of ambient $PM_{2.5}$ levels to changes in ammonia emissions as compared to NO_X emissions. The State relies in part on information previously presented in

[481] 2015 $PM_{2.5}$ Plan, Chapter 7, p. 7–9 to 7–10 and Appendix D, pp. D–8 to D–11.

[482] Title 13, California Code of Regulations, Section 2025 (''Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles''), paragraphs (e), (f), and (g), effective December 14, 2011. *See also* EPA's final rule approving CARB's Truck and Bus Rule. 77 FR 20308 at 20309–20310 (April 4, 2012).

[483] 2015 $PM_{2.5}$ Plan, Appendix B, p. B–7.

[484] 2015 $PM_{2.5}$ Plan, Chapter 7, pp, 7–3 to 7–4.

[485] 2015 $PM_{2.5}$ Plan, Chapter 6, Table 6–6, p. 6–7 vs. CARB Staff Report, p. 9.

[486] 2015 $PM_{2.5}$ Plan, CARB Staff Report, Table 1, p. 9.

[487] For example, the 2017 RFP benchmark for direct $PM_{2.5}$ should account for five years' worth of annual incremental reductions and is calculated as (2012 emission inventory) − (annual increment reduction)*5 = 66.0 tpd − (0.65 tpd/yr)*5 = 62.75 tpd. The projected emissions inventory for direct $PM_{2.5}$ in 2017 is 62.5 tpd, which is less than this RFP benchmark.

[488] 2015 $PM_{2.5}$ Plan, Appendix B, Table B–5.

[489] In the inventories provided in Appendix B of the Plan, emissions from these sources are found in the categories ''Farming Operations'', ''Pesticides/Fertilizers'', and ''Other (Waste Disposal)'', respectively.

[490] 2015 $PM_{2.5}$ Plan, Appendix B, Table B–5 (''Ammonia''), pp. B–16 to B–19. The three categories comprising this 95% of emissions in the ammonia emission inventory are Other (Waste Disposal), Pesticides/Fertilizers, and Farming Operations.

[491] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–240 to C–243.

[492] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–240 to C–241. *See also,* Memo to file, ''Call with California Air Resources Board regarding VOC and ammonia emissions inventory,'' R. Mays, EPA Region 9, September 30, 2015.

[493] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–276.

[494] 2015 $PM_{2.5}$ Plan, Appendix C, pp. C–272 to C–273.

the 2012 $PM_{2.5}$ Plan for the 2006 24-hour $PM_{2.5}$ standard to justify a NO_X for ammonia trading ratio of 0.1. The 2012 $PM_{2.5}$ Plan contains modeling results and states that ''reductions in ammonia are approximately nine times less effective than NO_X.'' [495] The 2012 $PM_{2.5}$ Plan also gives ammonia and NO_X sensitivities (ambient $PM_{2.5}$ changes in $\mu g/m^3$ per tpd of emission reductions), based on modeling of the ambient effect of a 25% area-wide reduction in each pollutant.[496] The ratios of these sensitivities give an ammonia-NO_X relative sensitivity ratio, or NO_X for ammonia trading ratio, of 0.10 for the Bakersfield-California site, and 0.11 (about 1/9) for the Bakersfield-Planz site.[497]

The 2015 $PM_{2.5}$ Plan similarly reflects the State's conclusion that ammonia emission reductions are about 10% as effective as NO_X reductions in decreasing ambient $PM_{2.5}$ concentrations.[498] We have reviewed the modeling analysis from which the State and District derived the 0.1 NO_X for ammonia trading ratio and propose to find that this ratio is a reasonable estimate of the sensitivity of ambient $PM_{2.5}$ to ammonia reductions relative to NO_X reductions, at least for the Bakersfield-California and Bakersfield-Planz monitoring sites for which the analysis was performed. For further discussion of our evaluation of this trading ratio for purposes of the Plan's RFP demonstration, *see* section IV.A of the EPA's Interpollutant Trading Ratios TSD.

The Bakersfield-California site is projected to be the design value site for the 1997 24-hour $PM_{2.5}$ standard in 2018,[499] which addresses the requirement of 40 CFR 51.1009(h) that an equivalent method for demonstrating RFP must do so at the design value monitoring site within the nonattainment area. As discussed in section V.E.5 of this proposed rule, although the State had initially projected the Madera site to be the design value site for the 1997 annual $PM_{2.5}$ standard in 2020, based on weight of evidence, it now appears the Bakersfield-Planz site will most likely be the design value site for the annual $PM_{2.5}$ standard in 2020. Either way, the 0.1 ammonia-NO_X relative sensitivity factor is adequate for the RFP demonstration because it is derived from modeling analyses that account for emission projections at both of these Bakersfield monitoring sites.

Taking the ammonia emissions increases into account, the NO_X equivalent emission levels presented in the Plan [500] for the 2014 and 2017 RFP milestone years fall below the benchmark RFP NO_X emissions levels for those same years.[501] In essence, the substantial reduction of NO_X emissions that is projected to result from the Plan's control strategy (*i.e.,* 37.8% reduction) from 2012 to 2020 [502] appears to more than offset the increase in ammonia emissions (*i.e.,* 8.6% increase) that is projected to occur during that same period.[503] More specifically, as shown in Table 11, taking into account the increase in ammonia emissions during the 2012 to 2020 period, the NO_X equivalent emission levels projected in the Plan for the 2014 and 2017 RFP milestone years are 5–6% lower than the levels representing generally linear NO_X emission reductions for those same years, thus showing NO_X emission reductions at a rate faster than the benchmark scenario.

TABLE 11—COMPARISON OF NO_X EQUIVALENT EMISSIONS TO RFP LINEAR EMISSIONS LEVEL FOR NO_X FOR RFP MILESTONE YEARS

[tpd, except row G]

		2012	2014	2017
A	NO_X Emissions	332.2	284.2	235.7
B	Ammonia Emissions	329.5	336.2	347.0
C	NO_X equivalent of ammonia increase	.....	0.7	1.8
D	Total NO_X Equivalent Emissions (A+C)	.....	284.9	237.5
E	RFP Linear Level for NO_X	.....	300.9	253.9
F	Total NO_X Equivalent Emission Reductions Beyond RFP Linear Level (E–D)	.....	16.0	16.4
G	% Below RFP Linear Level (F/E)	.....	5.3%	6.5%

Source: 2015 $PM_{2.5}$ Plan, CARB Staff Report, Table 12, p. 26.

As discussed in section V.C of this proposed rule, we are proposing to determine that VOCs do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 1997 $PM_{2.5}$ standards in the SJV and, accordingly, that no RFP demonstration for VOCs is necessary for purposes of the 1997 $PM_{2.5}$ standards in this area.

In sum, the 2015 $PM_{2.5}$ Plan demonstrates that emissions of direct $PM_{2.5}$, NO_X and SO_X will be reduced at rates representing generally linear progress toward attainment, and that the increase in ammonia emissions over the 2012–2020 planning period will be more than offset by substantial NO_X emission reductions exceeding the amounts necessary to show generally linear progress toward attainment. The Plan also demonstrates that all BACM, BACT and MSM that provide the bases for the direct $PM_{2.5}$, NO_X, SO_X, and ammonia emissions projections in the RFP analysis in the Plan are being implemented as expeditiously as practicable. Accordingly, we propose to determine that the Plan requires the annual incremental reductions in emissions of direct $PM_{2.5}$ and relevant $PM_{2.5}$ precursors that are necessary for the purpose of ensuring attainment of the 1997 24-hour and annual $PM_{2.5}$

[495] 2012 $PM_{2.5}$ Plan, Appendix G (''Weight of Evidence Analysis''), p. 64.

[496] 2012 $PM_{2.5}$ Plan, Appendix G, Table 7, p. 65.

[497] The difference between these two figures is about 0.1% when carried through in the calculation of the NO_X equivalent of ammonia.

[498] 2015 $PM_{2.5}$ Plan, Chapter 2, pp. 2–27 (stating that ''ammonia reductions at the Bakersfield-California site are . . . only 10% as effective as NO_X reductions''); *see also* CARB Staff Report, p. 26 and Table 12 (expressing NO_X and ammonia emissions combined as ''NO_X equivalent'' emission levels).

[499] 2015 $PM_{2.5}$ Plan, Appendix F, Table F–1 (''Projected 2018 and 2020 Design Values''), p. F–7.

[500] 2015 $PM_{2.5}$ Plan, CARB Staff Report, p. 26.

[501] This approach is consistent with the regulatory option of 40 CFR 51.1009(g)(2) that the RFP plan demonstrate emission levels that are ''projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.''

[502] 2015 $PM_{2.5}$ Plan, Appendix B, Table B–2, p. B–8 and CARB Staff Report, p. 9. Emissions of NO_X are project to decrease from 332.2 tpd in 2012 to 206.5 tpd in 2020 (*i.e.,* a decrease of 125.7 tpd or 37.8%).

[503] 2015 $PM_{2.5}$ Plan, Appendix B, Table B–5, p. B–19. Emissions of ammonia are project to increase 329.5 tpd in 2012 to 358.0 tpd in 2020 (*i.e.,* an increase of 28.5 tpd or 8.6%).

standards by 2018 and 2020, respectively, in accordance with the requirements of CAA sections 171(1) and 172(c)(2).

Quantitative Milestones

Although the RFP emission levels identified in the Plan for the 2017 and 2020 milestone years represent generally linear progress toward attainment by 2018 and 2020, the Plan as originally submitted in June 2015 does not identify an objective means for evaluating the area's compliance with these emission targets or progress toward attainment, other than through 2017 and 2020 emissions levels and CARB's commitment to report on the ''status of any emission reduction commitments'' in the Plan. We note that the Plan contains only one emission reduction commitment: To adopt amendments to District Rule 4692 (''Commercial Charbroiling'') in 2016 and to achieve 0.4 tpd of direct $PM_{2.5}$ emission reductions through implementation of this amended rule or a substitute rule achieving equivalent emission reductions.[504] Such a milestone would not provide an adequate means to evaluate progress toward attainment of the $PM_{2.5}$ NAAQS in the SJV, consistent with RFP requirements.

In the QM Letter, however, CARB committed to adopt and submit, no later than December 31, 2016, a revision to the 2015 $PM_{2.5}$ Plan that identifies specific milestones demonstrating progress toward attainment of the 24-hour $PM_{2.5}$ standard by December 31, 2018 and the annual $PM_{2.5}$ standard by December 31, 2020. The QM Letter describes the specific components of this SIP revision that CARB will adopt and submit by December 31, 2016, including milestones to track implementation of specific SIP control measures and commitments, and air quality milestones to be achieved by the 2017 RFP milestone year and 2020 attainment year. Two of the control measures identified in the QM Letter are responsible for a significant portion of the NO_X and direct $PM_{2.5}$ emission reductions necessary for RFP and attainment: CARB's Truck and Bus Rule and the District's residential wood burning rule (Rule 4901). Emissions from heavy heavy duty trucks and residential wood burning are the largest combustion sources of NO_X and direct $PM_{2.5}$ in San Joaquin Valley, and the Truck and Bus Rule and Rule 4901 achieve the largest amounts of NO_X and direct $PM_{2.5}$ emission reductions, respectively, identified in the Plan's attainment demonstration.[505] The District's commitment in the Plan to amend Rule 4692 (''Commercial Charbroiling'') in 2016 and to achieve 0.4 tpd of direct $PM_{2.5}$ emission reductions through implementation of this amended rule or a substitute rule achieving equivalent emission reductions [506] also accounts for a portion of the direct $PM_{2.5}$ emission reductions necessary for RFP and attainment in the Plan.[507] These implementation milestones, together with the updated emission inventories and air quality milestones for 2017 and 2020 that the State has also committed to identify as quantitative milestones in the SIP revision, would provide an objective means to evaluate the area's progress in achieving not only the incremental emissions reductions but also the incremental air quality improvements necessary to attain the 24-hour and annual $PM_{2.5}$ NAAQS by 2018 and 2020, respectively.

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan revision based on a commitment by the State to adopt specific enforceable measures by a date certain but not later than 1 year after the date of the plan approval. Based on CARB's commitments to submit the specific SIP revisions identified in the QM Letter by December 31, 2016, as discussed above, we propose to conditionally approve the quantitative milestone component of the 2015 $PM_{2.5}$ Plan.

We note that, consistent with the requirements of CAA section 189(c)(2) as interpreted in longstanding EPA policy, each of the milestone reports due March 31, 2018 (for the December 31, 2017 milestone date) and March 31, 2021 (for the December 31, 2020 milestone date) should include technical support sufficient to document completion statistics for appropriate milestones, *e.g.,* calculations and any assumptions made concerning emission reductions to date.[508]

G. Contingency Measures

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), $PM_{2.5}$ attainment plans must include contingency measures to be implemented if an area fails to meet RFP (''RFP contingency measures'') or fails to attain the $PM_{2.5}$ standards by the applicable attainment date (''attainment contingency measures''). Under subpart 4, however, the EPA interprets section 172(c)(9) in light of the specific requirements for particulate matter nonattainment areas. Section 189(b)(1)(A) differentiates between attainment plans that provide for timely attainment and those that demonstrate that attainment is impracticable. The 2015 $PM_{2.5}$ Plan is a Serious area plan that demonstrates attainment of the 1997 24-hour $PM_{2.5}$ NAAQS by December 31, 2018 and attainment of the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020, and thus, must include contingency measures for RFP and attainment.

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct continuing nonattainment. The principle requirements for contingency measures are: [509]

- Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date.
- The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measures will be implemented without further action by the State or by the EPA. In general, we expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of a failure.
- The contingency measures should consist of other control measures for the area that are not already relied upon to

[504] 2015 $PM_{2.5}$ Plan, Chapter 7, p. 7–6, and SJVUAPCD Governing Board Resolution 15–4–7A, paragraph 7.

[505] For stationary and area sources, ''Residential Fuel Combustion'' is the largest combustion source of direct $PM_{2.5}$ in San Joaquin Valley (*e.g.,* 9.4 tpd of the total 2012 winter average emissions of 61.0 tpd) and CARB's Staff Report identifies Rule 4901 as achieving the largest portion of the direct $PM_{2.5}$ emission reductions for attaining 1997 $PM_{2.5}$ NAAQS (*e.g.,* 2.9 tpd of the Plan's 6.6 tpd total winter average emission reductions from 2012 to 2018). 2015 $PM_{2.5}$ Plan, Appendix B, p. B–2 and CARB Staff Report, p. 9. For all sources, ''Heavy Heavy Duty Diesel Trucks (HHDV)'' are the largest source of NO_X in the San Joaquin Valley (*e.g.,* 120.5 tpd of the total 2012 annual average emissions of 332.2 tpd) and the Plan estimates that the largest emission reductions of NO_X during the attainment planning period, for which the Truck and Bus Rule is a significant driver, will result from this source category (*e.g.,* 59.2 tpd of the 125.7 tpd annual average emission reductions from 2012 to 2020). 2015 $PM_{2.5}$ Plan, Appendix B, p. B–7 and CARB Staff Report, p. 9.

[506] 2015 $PM_{2.5}$ Plan, Chapter 7, p. 7–6, and SJVUAPCD Governing Board Resolution 15–4–7A, paragraph 7.

[507] The Plan estimates that the amendments to Rule 4692 will achieve 0.4 tpd of the Plan's 5.2 tpd total annual average emission reductions of direct $PM_{2.5}$ from 2012 to 2020. 2015 $PM_{2.5}$ Plan, CARB Staff Report, p. 9.

[508] Addendum at 42017.

[509] General Preamble at 13543–13544 and Addendum at 42014–42015.

demonstrate attainment (*e.g.,* to meet RACM/RACT, BACM/BACT, or MSM requirements) or to meet RFP.

• The measures should provide for emissions reductions equivalent to approximately one year of reductions needed for RFP calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year.

Finally, we note that contingency measures can include federal, state, and local measures that are already scheduled for implementation or already implemented that provide for additional emissions reductions that are not relied on to demonstrate RFP or attainment. In other words, contingency measures are intended to achieve reductions over and beyond those relied on in the RFP and attainment demonstrations. Nothing in the CAA precludes a state from implementing such measures before they are triggered by a failure to meet RFP or a failure to attain by the applicable attainment date. EPA has approved numerous SIPs under this interpretation.[510]

2. Contingency Measures in the 2015 $PM_{2.5}$ Plan

The 2015 $PM_{2.5}$ Plan addresses the contingency measure requirement in Chapter 6, section 6.4 (''Contingency Measures'') of the Plan and in the CARB Staff Report, pages 26–27. Chapter 6, section 6.4 addresses contingency measure requirements for the 2014 and 2017 RFP milestone years and for the 2020 attainment year by discussing emission reductions to be achieved by already adopted measures, voluntary incentive programs, and inter-pollutant trading between $PM_{2.5}$ and NO_X for the 2020 attainment year. The CARB Staff Report, p. 26–27, provides a brief statement on contingency measures for the 2018 attainment year for the 24-hour $PM_{2.5}$ NAAQS and identifies several additional control measures to address the 2020 attainment year for the annual $PM_{2.5}$ NAAQS. Chapter 6 states that a year's worth of annual average emission reductions needed to demonstrate RFP (''One year's worth of RFP'') is calculated by taking the overall level of emission reductions needed to demonstrate attainment and dividing it by the number of years between the base year and attainment year.[511] Table 6–9 of the Plan (Contingency Emissions Reductions Target (tpd)) is reproduced below:

	Contingency Need = ''One year's worth of RFP''
Direct $PM_{2.5}$	0.4
NO_X	15.7
SO_X	0

Source: 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.4, Table 6–9.

Chapter 6 of the Plan identifies emission reductions to be achieved by the control strategy in the Plan in 2014 and 2017 that the District considers ''surplus'' to those reductions necessary to demonstrate RFP. The District states that these emission reductions are thus available to meet the contingency measure requirement.[512] Table 6–10 of the Plan (Reductions Surplus to RFP for Contingency (tpd)), reproduced below, identifies the $PM_{2.5}$ and NO_X emission reductions in 2014 and 2017 that the District considers ''surplus'' to RFP requirements:

Year	2014			2017		
	RFP target emissions level	Projected emissions inventory	Contingency	RFP target emissions level	Projected emissions inventory	Contingency
$PM_{2.5}$	65.2	63.3	1.9	64.0	62.5	1.5
NO_X	300.9	284.2	16.7	253.9	235.7	18.2

Source: 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.4, Table 6–10.

For the 2020 attainment year, the Plan provides estimates of emission reductions projected in 2021 from a combination of adopted state and local measures, including District Rules 4901, 4306, 4308, and 4905 for direct $PM_{2.5}$ and NO_X and mobile source measures for several source categories for NO_X.[513] Table 6–11 of the Plan identifies 1.6 tpd of direct $PM_{2.5}$ and 12.0 tpd of NO_X emission reductions as reductions that are available to meet the 2020 attainment contingency measure requirement. In order to address a shortfall of needed NO_X emission reductions, the District relies on inter-pollutant trading of direct $PM_{2.5}$ emission reductions for NO_X emission reductions at a ratio of 1:9 and, based on this analysis, concludes that there are sufficient emission reductions to meet the attainment contingency requirement.[514] The CARB Staff Report also addresses contingency measures for the 2020 attainment year. It identifies additional direct $PM_{2.5}$ and NO_X emission reductions to be achieved by the following control measures: ARB mobile source measures, the Portable Equipment Registration Program (PERP) and Airborne Toxic Control Measure (ATCM), Indirect Source Review (ISR) on-site mitigation (*i.e.,* District Rule 9510), and the AERO [515] rule (*i.e.,* District Rule 4320). Based on these analyses, CARB concludes that the SIP control strategy achieves emission reductions sufficient to meet the attainment contingency measure requirement for the annual $PM_{2.5}$ NAAQS.

Finally, for the 2018 attainment year for the 24-hour $PM_{2.5}$ NAAQS, the CARB Staff Report states that ''additional reductions in 2019 provide 0.2 tpd of $PM_{2.5}$ and 10 tpd of NO_X reductions'' but does not identify the control measures that achieve these emission reductions.[516]

3. EPA's Evaluation of the 2015 $PM_{2.5}$ Plan's Contingency Measures

The contingency measures portion of the 2015 $PM_{2.5}$ Plan contains several deficiencies.

First, the Plan incorrectly calculates one year's worth of RFP emission

[510] *See,* for example, 62 FR 15844 (April 3, 1997) (direct final rule approving Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving Connecticut ozone SIP revision); *see also LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

[511] 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.4, p. 6–9, Table 6–9.

[513] 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.4, p. 6–11, Table 6–11.

[514] 2015 $PM_{2.5}$ Plan, p. 6–12, Table 6–12.

[515] AERO stands for Advanced Emission Reduction Options for Boilers, Steam Generators, and Process Heaters Greater Than 5.0 MMBtu/hr.

[516] 2015 $PM_{2.5}$ Plan, CARB Staff Report, p. 27.

reductions. Although Chapter 6 of the Plan correctly describes the required steps for calculating one year's worth of annual average emission reductions needed to demonstrate RFP, the actual calculation in the Plan is based on 2020 baseline emission reductions estimates [517] rather than the attainment targets of 60.8 tpd of direct $PM_{2.5}$ and 206.5 tpd NO_X.[518] EPA recalculated one year's worth of RFP emission reductions based on the attainment emission levels presented in the Plan, as shown in Table 12 below.

TABLE 12—EPA'S CALCULATION OF ''ONE YEAR'S WORTH OF RFP'' USING ATTAINMENT EMISSIONS LEVELS

	2012 Base year emissions (tpd)	Calculation of ''One Year's Worth of RFP'' Using Attainment Emissions Levels (tpd)		
		2020 Attainment emissions (tpd)	Total emission reduction (tpd)	One year's worth of RFP emission reductions (tpd)
Direct $PM_{2.5}$	66.0	60.8	5.2	0.65
NO_X	332.2	206.5	125.7	15.7
SO_X	8.1	7.8	0.3	0.0

Source: 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.4, Table 6–6 and CARB Staff Report, p. 9.

Thus, according to EPA's calculation, one year's worth of RFP is 0.65 tpd of direct $PM_{2.5}$, 15.7 tpd of NO_X and 0.0 tpd of SO_X. The NO_X and SO_X values are essentially identical to the values identified in Chapter 6 of the Plan (and reproduced in Table 6–9 above), but EPA's calculation of the direct $PM_{2.5}$ emission reductions representing one year's worth of RFP is significantly higher than the value identified in Chapter 6 of Plan. Consequently, the Plan significantly underestimates the direct $PM_{2.5}$ emission reductions necessary to satisfy contingency measure requirements.

Second, the 2015 $PM_{2.5}$ Plan does not provide an adequate basis for the State's and District's conclusion that the emission reductions identified for contingency measure purposes are in fact ''surplus'' to the reductions needed to demonstrate RFP and timely attainment (*e.g.,* for RACM/RACT, BACM/BACT, or MSM). Section 6.4.2 of the Plan states that regulatory emission reductions to be achieved by 2014 and 2017 exceed the minimum emission reductions needed to demonstrate RFP in those years but does not provide a basis for the District's conclusion that the identified emission reductions are not relied on to satisfy RFP requirements. Similarly, the Plan provides no support for either the District's conclusion that ''additional $PM_{2.5}$ and NO_X reductions occurring between 2020 and 2021 can serve as attainment contingencies'' or the State's conclusion that ''[f]or the interim 24-hour 2018 attainment deadline, additional reductions in 2019 provide for 0.2 tpd of $PM_{2.5}$ and 10 tpd of NO_X reductions.'' [519]

Third, two of the control measures identified in the CARB Staff Report as contingency measures—SJVUAPCD Rule 4320 (AERO Rule) and SJVUAPCD Rule 9510 (ISR On-Site Mitigation)—are not creditable for SIP purposes at this time. Rule 4320 (AERO Rule) is not SIP-creditable because it contains provisions that allow owners and operators to pay a fee in lieu of complying with the rule's emission limits and which render the NO_X emission limits in the rule unenforceable.[520] Rule 9510 (ISR On-Site Mitigation) is not SIP-creditable because it likewise contains provisions that allow project developers to pay fees instead of implementing on-site pollution mitigation plans.[521]

Fourth, the contingency measure portion of the 2015 $PM_{2.5}$ Plan indicates that the District is relying on ''SIP-creditable incentive-based emissions reductions'' to address contingency measure requirements but does not identify the specific incentive grant programs expected to provide the requisite emission reductions, nor does it provide the documentation and related enforceable commitments necessary to support a SIP submission that relies on incentive programs for SIP emission reduction credit.[522] Finally, the contingency measure portion of the 2015 $PM_{2.5}$ Plan does not discuss ammonia emissions or provide any basis for a conclusion that contingency measures for purposes of ammonia are not necessary to satisfy the statutory requirements.

In sum, the 2015 $PM_{2.5}$ Plan does not contain or identify SIP-creditable measures that are surplus to RFP and attainment needs and that are sufficient to achieve at least one year's worth of emission reductions for each of the RFP and attainment years identified in the Plan. Accordingly, we propose to disapprove the contingency measure portion of the 2015 $PM_{2.5}$ Plan for failure to satisfy the requirements of CAA section 172(c)(9).

H. Major Stationary Source Control Requirements Under CAA Section 189(e)

Section 189(e) of the Act specifically requires that the control requirements applicable to major stationary sources of direct $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area.[523] The control requirements applicable to major stationary sources of direct $PM_{2.5}$ in a Serious $PM_{2.5}$ nonattainment area include, at minimum, the requirements of a nonattainment new source review (NNSR) permit program meeting the requirements of CAA sections 172(c)(5)

[517] *See* 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.3, Table 6–6, Total Reductions Necessary to Reach Attainment (tpd). The ''Attainment Emissions Level'' used in Table 6–6 of the Plan reflect the projected emission inventory levels found in Appendix B Emission Inventory Tables, and does not reflect the attainment target levels identified by the CARB Staff Report, section II.B. Attainment Emission Levels, Table 1.

[518] CARB Staff Report, section II.B. Attainment Emission Levels, p. 9.

[519] 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.4.2 and CARB Staff Report, p. 27.

[520] 75 FR 68294 (November 5, 2010) and 76 FR 16696 (March 25, 2011).

[521] 76 FR 26609 at 26612–26613 (May 9, 2011).

[522] The CAA requires that emission reductions resulting from incentive programs be ''quantifiable, surplus, enforceable and permanent'' in order to qualify for emission reduction credit in a SIP. *See, e.g.,* ''Improving Air Quality with Economic Incentive Programs,'' U.S. EPA, Office of Air and Radiation, January 2001; *see also* 80 FR 19020 (April 9, 2015) (final action on SJVUAPCD Rule 9610).

[523] General Preamble at 13539 and 13541–42.

and 189(b)(3).[524] As part of our April 7, 2015 final action to reclassify the SJV area as Serious nonattainment for the 1997 $PM_{2.5}$ standards, we established a May 7, 2016 deadline for the State to submit NNSR SIP revisions addressing the requirements of CAA sections 189(b)(3) and 189(e) of the Act.[525]

California has not yet submitted the NNSR SIP revisions required to satisfy the subpart 4 requirements for Serious nonattainment areas because they are not yet due. Accordingly, we are not proposing any action with respect to these requirements at this time. CARB submitted amendments to the SJVUAPCD's NNSR rules in 2011 to address the 1997 $PM_{2.5}$ NAAQS to ensure that new and modified major sources of $PM_{2.5}$ undergo pre-construction review, and the EPA approved these NNSR SIP revisions on September 17, 2014.[526]

I. Motor Vehicle Emission Budgets

1. Requirements for Motor Vehicle Emissions Budgets

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that an area's regional transportation plans (RTP) and transportation improvement programs (TIP) conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (budgets) contained in all control strategy SIPs. An attainment, maintenance, or RFP SIP should include budgets for the attainment year, each required RFP milestone year, or the last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.[527]

$PM_{2.5}$ plans should identify budgets for direct $PM_{2.5}$, NO_X and all other $PM_{2.5}$ precursors whose on-road emissions are determined to significantly contribute to $PM_{2.5}$ levels in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment. All direct $PM_{2.5}$ SIP budgets should include direct $PM_{2.5}$ motor vehicle emissions from tailpipes, brake wear, and tire wear. A state must also consider whether re-entrained paved and unpaved road dust or highway and transit construction dust are significant contributors and should be included in the direct $PM_{2.5}$ budget.[528]

Transportation conformity trading mechanisms are allowed under 40 CFR 93.124 where a SIP establishes appropriate mechanisms for such trades. The basis for the trading mechanism is the SIP attainment modeling which established the relative contribution of each $PM_{2.5}$ precursor pollutant.

In general, only budgets in approved SIPs can be used for transportation conformity purposes. However, section 93.118(e) of the transportation conformity rule allows budgets in a SIP submission to apply for conformity purposes before the SIP submission is approved under certain circumstances. First, there must not be any other approved SIP budgets that have been established for the same time frame, pollutant, and CAA requirement. Second, the EPA must find that the submitted SIP budgets are adequate for transportation conformity purposes. To be found adequate, the submission must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and (5). The transportation conformity rule does, however, allow for replacement of previously approved budgets by submitted motor vehicle emissions budgets that the EPA has found adequate, if the EPA has limited the duration of its prior approval to the period before it finds replacement budgets adequate.[529]

2. Motor Vehicle Emissions Budgets in the 2015 $PM_{2.5}$ Plan

The 2015 $PM_{2.5}$ Plan includes budgets for direct $PM_{2.5}$ and NO_X for 2014 and 2017 (RFP milestone years), 2018 (projected attainment year for the 1997 24-hour NAAQS), and 2020 (projected attainment year for the 1997 annual NAAQS).[530] The budgets were calculated using EMFAC2014, CARB's latest version of the EMFAC model for estimating emissions from on-road vehicles operating in California.[531] The SJV has eight separate county-based MPOs; therefore, separate budgets are provided for each MPO as well as a total for the nonattainment area as a whole. The budgets for 2014, 2017, and 2020 reflect annual daily average emissions, and the budgets for 2018 reflect winter daily average emissions. Winter average day emissions are used for the 2018 budgets because SJV's exceedances of the $PM_{2.5}$ 24-hour NAAQS occur almost exclusively during the winter months and are linked with the District's 2018 attainment demonstration for the 24-hour $PM_{2.5}$ NAAQS. Annual average day emissions are used for the 2014 and 2017 budgets because the District has determined that annual average day budgets are the more protective of the two budgets options (*i.e.,* annual versus 24-hour NAAQS) for the RFP milestone years when both standards apply, as is the case for the 2015 $PM_{2.5}$ Plan. Annual average day emissions are used for the 2020 budgets because those emissions are linked with the District's attainment demonstration for the annual $PM_{2.5}$ NAAQS.

The direct $PM_{2.5}$ budgets include tailpipe, brake wear, and tire wear emissions but exclude paved road, unpaved road, and road construction dust based on the District's conclusion that these source categories are insignificant contributors to $PM_{2.5}$ levels in the SJV.[532] The Plan does not include budgets for SO_2, VOC, and ammonia. Under 40 CFR 93.102(b)(2)(v), the State

[524] CAA section 189(b)(1) (requiring that Serious area plans include provisions submitted to meet the requirements for Moderate areas in section 189(a)(1)).

[525] 80 FR 18528 at 18533 (April 7, 2015).

[526] 79 FR 55637 (September 17, 2014).

[527] 40 CFR 93.118(e)(4)(v).

[528] 40 CFR 93.102(b) and 93.122(f); *see also* conformity rule preamble at 69 FR 40004, 40031–40036 (July 1, 2004).

[529] 40 CFR 93.118(e)(1).

[530] 2015 $PM_{2.5}$ Plan, Chapter 6, Section 6.5.4 (for 2014, 2017, and 2020 budgets) and *2018 Transportation Conformity Budgets for the San Joaquin Valley $PM_{2.5}$ SIP Plan Supplement,''* dated June 19, 2015, and adopted by ARB Board on July 23, 2015, p. 4.

[531] EMFAC is short for *EM*ission *FAC*tor. EPA announced the availability of the EMFAC2014 model for use in state implementation plan development and transportation conformity in California on December 14, 2015. EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**. EMFAC2014 must be used for all new regional emissions analyses and CO, PM_{10} and $PM_{2.5}$ hot-spot analyses that are started on or after December 14, 2017, which is the end of the grace period for EMFAC2014.

[532] Plan at Chapter 6, Section 6.5.3.

is not required to include budgets for VOC, sulfur dioxide (SO_2) and/or ammonia (NH3) unless EPA or the State has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the $PM_{2.5}$ nonattainment problem. The District considered on-road SO_2, VOC, and ammonia emissions and concluded that it is not necessary to control on-road SO_2, VOC, and ammonia emissions to attain the NAAQS. The District states in the Plan that on-road mobile exhaust estimates of SO_X are less than 1 ton per day Valley-wide in the budget years; VOC emissions do not contribute significantly to the formation of secondary $PM_{2.5}$ in the SJV; and on-road mobile exhaust estimates of ammonia are less than 1 ton per day Valley-wide in the budget years.[533]

TABLE 13—MVEBS FOR THE SAN JOAQUIN VALLEY FOR 1997 $PM_{2.5}$ STANDARD

County	2014		2017		2018		2020	
	Annual average, tpd		Annual average, tpd		Winter average, tpd		Annual average, tpd	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	1.2	41.2	1.0	31.2	0.9	29.9	0.9	25.3
Kern (SJV)	1.0	36.5	0.8	28.0	0.8	27.7	0.8	23.3
Kings	0.2	7.6	0.2	5.7	0.1	5.5	0.1	4.8
Madera	0.2	7.8	0.2	5.8	0.2	5.5	0.2	4.7
Merced	0.4	13.9	0.3	10.7	0.3	10.3	0.3	8.9
San Joaquin	0.7	19.6	0.6	14.9	0.6	14.4	0.6	11.9
Stanislaus	0.5	15.6	0.4	11.9	0.4	11.4	0.4	9.6
Tulare	0.5	14.9	0.4	11.9	0.4	10.3	0.4	9.6
Totals [a]	4.8	157.0	3.8	119.0	3.6	115.0	3.5	96.8

Sources: 2015 $PM_{2.5}$ Plan, Chapter 6, p. 6–16; and *Transportation Conformity Budgets for the San Joaquin Valley $PM_{2.5}$ SIP, Plan Supplement,* dated June 19, 2015, and adopted by ARB Board on July 23, 2015.

[a] Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding.

The 2015 $PM_{2.5}$ Plan also includes a proposed trading mechanism for transportation conformity analyses that would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$, using a NO_X to $PM_{2.5}$ ratio of 9:1.[534] The State is proposing to use the same 9:1 ratio that was in the 2008 $PM_{2.5}$ Plan and approved by the EPA.[535]

Using the same Community Multiscale Air Quality modeling application [536] underlying the attainment demonstrations in the prior SJV 2008 $PM_{2.5}$ Plan and the current 2015 $PM_{2.5}$ Plan, CARB previously developed an equivalency ratio between emission reductions of direct $PM_{2.5}$ and of NO_X. For each pollutant, CARB modeled the ambient effect of a 10% reduction of emissions over the modeling domain. The concentration change per emission change gave a precursor effectiveness value for NO_X and an effectiveness value for direct $PM_{2.5}$. The ratio of these two effectiveness values provided the NO_X:$PM_{2.5}$ trading ratio.

To ensure that the trading mechanism does not affect the ability of the SJV to meet the NO_X budget, the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met. Each MPO responsible for demonstrating transportation conformity must clearly document the calculations used in the trading, along with any additional reductions of NO_X or $PM_{2.5}$ emissions in the conformity analysis.

3. Evaluation and Proposed Actions

We have evaluated the budgets against our adequacy criteria in 40 CFR 93.118(e)(4) and (5) as part of our review of the budgets' approvability (*see* section V in the EPA's General TSD for this proposal) and will complete the adequacy review of these budgets concurrent with our final action on the 2015 $PM_{2.5}$ Plan.[537] On September 18, 2015, the EPA announced the availability of the 2015 $PM_{2.5}$ Plan with MVEBs and a 30-day public comment period. This announcement was posted on EPA's Adequacy Web site at: *http://www.epa.gov/otaq/stateresources/transconf/reg9sips.htm#ca.* The comment period for this notification ended on October 19, 2015.

Based on the information about re-entrained road dust in the Plan and in accordance with 40 CFR 93.102(b)(3), we propose to concur with the District's finding that re-entrained road dust emissions from paved roads, unpaved roads, and road construction are not significant contributors to the $PM_{2.5}$ nonattainment problem in the Valley and that these emissions therefore do not need to be addressed in the MVEBs (*see* discussion in section V.A.2 of this proposed rule). Additionally, based on the information about VOC, SO_2, and ammonia emissions in the Plan and in accordance with 40 CFR 93.102(b)(2)(v), we propose to find that it is not necessary to establish motor vehicle emissions budgets for transportation-related emissions of VOC, SO_2, and ammonia to attain the 1997 $PM_{2.5}$ standards in the SJV.

For the reasons discussed in section V.E.2 of this proposed rule, we are proposing to approve the State's demonstration that it is impracticable to attain the 1997 $PM_{2.5}$ NAAQS in the SJV by the applicable Serious area attainment date of December 15, 2015 and proposing to extend the attainment dates to December 31, 2018 and December 31, 2020 for the 24-hour and annual NAAQS, respectively.

For the reasons discussed in sections V.E.v and V.F of this proposed rule, we are proposing to approve the RFP and attainment demonstrations in the 2015 $PM_{2.5}$ Plan. The budgets, as given in

[533] *Id.*

[534] 2015 $PM_{2.5}$ Plan, Chapter 6, p. 6–17.

[535] 76 FR 69896 (November 9, 2011).

[536] The EPA approved this air quality modeling as part of its approval of the attainment demonstration in the SJV $PM_{2.5}$ Plan. *See* 76 FR 41338, 41349 and 76 FR 69896, 69924.

[537] Under the Transportation Conformity regulations, the EPA may review the adequacy of submitted motor vehicle emission budgets simultaneously with the EPA's approval or disapproval of the submitted implementation plan. 40 CFR 93.118(f)(2).

Table 13 of this proposed rule, are consistent with these demonstrations, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 93.118(e)(4) and (5). For these reasons, the EPA proposes to approve the budgets listed in Table 13 above. We provide a more detailed discussion in section V of the EPA's General TSD, which can be found in the docket for today's action.

CARB has requested that we limit the duration our approval of the budgets only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[538] The transportation conformity rule allows us to limit the approval of budgets.[539] However, we will consider a state's request to limit an approval of its MVEB only if the request includes the following elements: [540]

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and
- A request that the EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

Because CARB's request does not include all of these elements, we cannot at this time propose to limit the duration of our approval of the submitted budgets until new budgets have been found adequate. In order to limit the approval, we would need the information described above in order to determine whether such limitation is reasonable and appropriate in this case. Once CARB has adequately addressed that information, we intend to review it and take appropriate action. If we propose to limit the duration of our approval of the MVEB in the 2015 $PM_{2.5}$ Plan, we will provide the public an opportunity to comment. The duration of the approval of the budgets, however, would not be limited until we complete such a rulemaking.

We have previously approved motor vehicle emissions budgets for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS.[541] These budgets will continue to apply for the 1997 $PM_{2.5}$ NAAQS in the SJV area until we finalize our approval of the budgets in the 2015 $PM_{2.5}$ Plan or find them adequate.

As noted above, the State included a trading mechanism to be used in transportation conformity analyses that would use the proposed budgets in the 2015 $PM_{2.5}$ Plan as allowed for under 40 CFR 93.124. This trading mechanism would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in $PM_{2.5}$, using a NO_X for $PM_{2.5}$ ratio of 9:1. To ensure that the trading mechanism does not affect the ability to meet the NO_X budget, the Plan provides that the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met. The Plan also provides that each MPO responsible for demonstrating transportation conformity shall clearly document the calculations used in the trading, along with any additional reductions of NO_X or $PM_{2.5}$ emissions in the conformity analysis.

The EPA has reviewed the trading mechanism as described on page 6–17 in section 6.5.5 of Chapter 6 the 2015 $PM_{2.5}$ Plan and finds it is appropriate for transportation conformity purposes in the San Joaquin Valley for the 1997 $PM_{2.5}$ NAAQS. We note that the 9:1 NO_X for $PM_{2.5}$ ratio the State is proposing to use for transportation conformity purposes in the 2015 Plan is the same as previously approved by EPA in its action on the SJV 2008 $PM_{2.5}$ Plan.[542] We therefore propose to approve the trading mechanism with a NO_X for $PM_{2.5}$ trading ratio of 9:1 as enforceable components of the transportation conformity program for the SJV for the 1997 $PM_{2.5}$ NAAQS. For further discussion of our evaluation of the 9:1 NO_X for $PM_{2.5}$ trading ratio for purposes of the Plan's motor vehicle emission budgets, please *see* section IV.B of the EPA's Interpollutant Trading Ratios TSD.

VI. Summary of Proposed Actions and Request for Public Comment

Under CAA sections 110(k)(3) and 110(k)(4), the EPA is proposing to approve, conditionally approve, and disapprove SIP revisions submitted by California to address the Act's Serious area planning requirements for the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area. Specifically, the EPA is proposing to approve the following elements of the 2015 $PM_{2.5}$ Plan:

1. The 2012 base year emissions inventories as meeting the requirements of CAA section 172(c)(3);
2. the best available control measures/best available control technology demonstration as meeting the requirements for RACM/RACT and BACM/BACT in CAA sections 172(c)(1), 189(a)(1)(C), and 189(b)(1)(B);
3. the attainment demonstration as meeting the requirements of CAA sections 172(c)(1) and 189(b)(1)(A);
4. the reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2);
5. the State's application for an extension of the Serious area attainment date to December 31, 2018 for the 1997 24-hour $PM_{2.5}$ NAAQS and to December 31, 2020 for the 1997 annual $PM_{2.5}$ NAAQS, as meeting the requirements of CAA section 188(e);
6. the District's commitment to amend and implement revisions to Rule 4692 (''Commercial Charbroiling'') for under-fired charbroilers in accordance with the schedule provided on page 7–6 of the 2015 $PM_{2.5}$ Plan to achieve the emissions reductions identified therein, as adopted in SJVUAPCD Governing Board Resolution 15–4–7A; and
7. the 2014, 2017, 2018, and 2020 motor vehicle emissions budgets, as shown in Table 13 of this proposed rule, because they are derived from approvable attainment and RFP demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A.

EPA is also proposing to approve the interpollutant trading mechanism provided in the 2015 $PM_{2.5}$ Plan for use in transportation conformity analyses, in accordance with 40 CFR 93.124, with the condition that trades are limited to substituting excess reductions in NO_X emissions for direct $PM_{2.5}$ emission reductions.

Under CAA section 110(k)(4), the EPA is proposing to conditionally approve the quantitative milestones identified in the 2015 $PM_{2.5}$ Plan because they do not fully satisfy the requirement for quantitative milestones in section 189(c) of the Act. Section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the State to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. In this instance, the enforceable measures that the State must submit are enforceable quantitative milestones that enable the EPA to determine whether the area is meeting its reasonable further progress goals as contemplated in the attainment plan and, if the area is not doing so, that enable the EPA to require the State to

[538] Letter, Richard W. Corey, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9, June 25, 2015.

[539] 40 CFR 93.118(e)(1).

[540] 67 FR 69141 (November 15, 2002), limiting our prior approval of MVEB in certain California SIPs.

[541] 76 FR 69896, 69923 (November 9, 2011).

[542] 76 FR 69896 (November 9, 2011).

submit plan revisions to correct the deficiency. On December 15, 2015, CARB submitted a letter committing to submit a SIP revision containing specific quantitative milestones no later than December 31, 2016. If we finalize this proposed conditional approval, CARB must adopt and submit the SIP revisions it has committed to submit by December 31, 2016. If CARB fails to comply with this commitment, this conditional approval will convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2) and a two-year clock for a federal implementation plan (FIP) under CAA section 110(c)(1).

Finally, under CAA section 110(k)(3), the EPA is proposing to disapprove the contingency measure portion of the 2015 $PM_{2.5}$ Plan because it does not fully satisfy the requirement for contingency measures in section 172(c)(9) of the Act. If we finalize the proposed disapproval, the offset sanction in CAA section 179(b)(2) would apply in the SJV $PM_{2.5}$ nonattainment area 18 months after the effective date of final disapproval and the highway funding sanctions in CAA section 179(b)(1) would apply in the area 6 months after the offset sanction is imposed. Neither sanction would apply if California submits and the EPA approves, prior to the implementation of the sanctions, SIP revisions that correct the deficiencies identified in the EPA's final action. Additionally, the disapproval action would trigger an obligation on the EPA to promulgate a federal implementation plan unless California corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the ''Date'' and ''Addresses'' sections at the beginning of this preamble.

VII. Statutory and Executive Order Reviews

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

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

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 beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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 (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: January 28, 2016.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2016–02325 Filed 2–8–16; 8:45 am]

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Part III

Department of Health and Human Services

42 CFR Part 2
Confidentiality of Substance Use Disorder Patient Records; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 2

[SAMHSA–4162–20]

RIN 0930–AA21

Confidentiality of Substance Use Disorder Patient Records

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses changes to the Confidentiality of Alcohol and Drug Abuse Patient Records regulations. This proposal was prompted by the need to update and modernize the regulations. These laws and regulations governing the confidentiality of substance abuse records were written out of great concern about the potential use of substance abuse information against an individual, preventing those individuals with substance use disorders from seeking needed treatment. The last substantive update to these regulations was in 1987. Over the last 25 years, significant changes have occurred within the U.S. health care system that were not envisioned by the current regulations, including new models of integrated care that are built on a foundation of information sharing to support coordination of patient care, the development of an electronic infrastructure for managing and exchanging patient information, and a new focus on performance measurement within the health care system. SAMHSA wants to ensure that patients with substance use disorders have the ability to participate in, and benefit from new integrated health care models without fear of putting themselves at risk of adverse consequences. These new integrated models are foundational to HHS's triple aim of improving health care quality, improving population health, and reducing unnecessary health care costs. SAMHSA strives to facilitate information exchange within new health care models while addressing the legitimate privacy concerns of patients seeking treatment for a substance use disorder. These concerns include: The potential for loss of employment, loss of housing, loss of child custody, discrimination by medical professionals and insurers, arrest, prosecution, and incarceration. This proposal is also an effort to make the regulations more understandable and less burdensome. We welcome public comment on this proposed rule.

DATES: To be assured consideration, comments must be received at one of the **ADDRESSES** provided below, no later than 5 p.m. on April 11, 2016.

ADDRESSES: In commenting, please refer to file code SAMHSA 4162–20.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (to avoid duplication, please submit your comments in only one of the ways listed):

1. *Electronically: Federal eRulemaking Portal.* You may submit comments electronically to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* Written comments mailed by regular mail must be sent to the following address ONLY: The Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, Attn: SAMHSA–4162–20, 5600 Fishers Lane, Room 13N02B, Rockville, Maryland 20857.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* Written comments sent by express or overnight mail must be sent to the following address ONLY: The Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, Attn: SAMHSA–4162–20, 5600 Fishers Lane, Room 13N02B, Rockville, Maryland 20852.

4. *By hand or courier.* Written comments delivered by hand or courier must be delivered to the following address ONLY: The Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, Attn: SAMHSA–4162–20, 5600 Fishers Lane, Room 13N02B, Rockville, Maryland 20857.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kate Tipping, 240–276–1652, Email address: *PrivacyRegulations@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: ALL COMMENTS received before the close of the comment period are available for viewing by the public, including any personally identifiable and/or confidential information that is included in a comment. We post all comments received as soon as possible after they have been received on the following Web site: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received before the close of the comment period will also be available for public inspection, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 240–276–1660.

We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and will respond to the comments in the preamble of the final rule.

Effective date of proposed § 2.13(d): As discussed in the preamble, the proposed § 2.13(d) shall not go into effect until two years after the effective date of the final rule.

Table of Contents

To assist readers in referencing sections contained in this preamble, we are providing a table of contents.

Acronyms

ACO Accountable Care Organization
ABAM American Board of Addiction Medicine
ADAMHA Alcohol, Drug Abuse and Mental Health Administration
ANSI American National Standards Institute
ARRA American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5)
ATR Access to Recovery
CCO Coordinated Care Organization
CFR Code of Federal Regulations
CHIP Children's Health Insurance Program
CMS Centers for Medicare & Medicaid Services
DS4P Data Segmentation for Privacy
EHR Electronic Health Record
FAX Facsimile
FDA Food and Drug Administration
FR Federal Register
FWA Federalwide Assurance
HHS Department of Health and Human Services
HIE Health Information Exchange
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
HITECH Health Information Technology for Economic and Clinical Health
HL7 Health Level 7
IG Implementation Guide
IT Information Technology
IRB Institutional Review Board
NPRM Notice of Proposed Rulemaking
N-SSATS National Survey of Substance Abuse Treatment Services
OECD Organization for Economic Cooperation and Development
OHRP Office for Human Research Protections
OMB Office of Management and Budget
ONC Office of the National Coordinator for Health Information Technology
PDMP Prescription Drug Monitoring Program
QE Qualified Entity
QSO Qualified Service Organization
QSOA Qualified Service Organization Agreement
RFA Regulatory Flexibility Act
SAMHSA Substance Abuse and Mental Health Services Administration
S&I Standards and Interoperability
TEDS Treatment Episode Data Set
U.S.C. United States Code
VA Department of Veterans Affairs

I. Executive Summary

A. Purpose

This proposed rule would revise title 42 of the Code of Federal Regulations part 2 (42 CFR part 2), Confidentiality of Alcohol and Drug Abuse Patient Records regulations. The authorizing statute (Title 42, United States Code, Section 290dd–2) protects the confidentiality of the identity, diagnosis, prognosis, or treatment of any patient records which are maintained in connection with the performance of any federally assisted program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research. Title 42 of the CFR part 2 was first promulgated in 1975 (40 FR 27802) and last substantively updated in 1987 (52 FR 21796).

The laws and regulations governing the confidentiality of substance abuse records were written out of great concern about the potential use of substance abuse information against individuals, causing individuals with substance use disorders to not seek needed treatment. The disclosure of records of individuals with substance use disorders has the potential to lead to a host of negative consequences including: Loss of employment, loss of housing, loss of child custody, discrimination by medical professionals and insurers, arrest, prosecution, and incarceration. The purpose of the regulations at 42 CFR part 2 is to ensure that a patient receiving treatment for a substance use disorder in a part 2 program is not made more vulnerable by reason of the availability of their patient record than an individual with a substance use disorder who does not seek treatment. Under the current regulations, a federally assisted substance use disorder program generally may only release identifiable information related to substance use disorder diagnosis, treatment, or referral for treatment with the individual's express consent. Now over 25 years later, this proposed rule would make policy changes to the regulations to better align them with advances in the U.S. health care delivery system while retaining important privacy protections.

Unless otherwise noted, these changes would be applicable beginning 180 days after the publication of the final rule. If programs that were required to comply with 42 CFR part 2 prior to the effective date of the final rule continue to fall within the scope of 42 CFR part 2 as outlined in the final rule, they would be required to come into compliance with any revised regulations by the effective date of the final rule. However, signed consent forms in place prior to the effective date of the final rule would be valid until they expire. Nonetheless, part 2 programs may update signed consent forms consistent with the final rule, prior to the effective date of the final rule if they so choose. Consents obtained after the effective date would need to comply with the final rule, regardless of whether the consents involve patient identifying information obtained prior to or after the effective date of the final rule.

B. Summary of the Major Provisions

This proposed rule is intended to modernize the 42 CFR part 2 (part 2) rules by facilitating the electronic exchange of substance use disorder information for treatment and other legitimate health care purposes while ensuring appropriate confidentiality protections for records that might identify an individual, directly or indirectly, as having or having had a substance use disorder. To achieve this goal, we propose the following modifications.

We propose, in Section III.A., Reports of Violations (§ 2.4), to revise the requirement for reporting violations of these regulations by methadone programs (now referred to as opioid treatment programs) to the Food and Drug Administration (FDA) because the authority over these programs was transferred from the FDA to Substance Abuse and Mental Health Services Administration (SAMHSA) in 2001.

In Section III.B., Definitions (§ 2.11), we propose to revise some existing definitions, add new definitions of key terms that apply to 42 CFR part 2, and consolidate all but one of the definitions that are currently in other sections in § 2.11. We propose to revise the definitions of ''Central registry,'' ''Disclose or disclosure,'' ''Maintenance treatment,'' ''Member program,'' ''Patient,'' ''Patient identifying information,'' ''Person,'' ''Program,'' ''Qualified service organization (QSO),'' ''Records,'' and ''Treatment.'' We also propose to add definitions of ''Part 2 program,'' ''Part 2 program director,'' ''Substance use disorder,'' ''Treating provider relationship,'' and ''Withdrawal management.'' Some of these new definitions replace existing definitions. In addition, we propose to revise the regulatory text to use terminology in a consistent manner.

In Section III.C., Applicability (§ 2.12), SAMHSA proposes to continue to apply the 42 CFR part 2 regulations to a program that is federally assisted and holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment, but, where currently paragraph (1) of the definition of ''Program'' does not apply to general medical facilities, SAMHSA now proposes that paragraph (1) would not apply to either general medical facilities or general medical practices. The proposed language goes on to clarify that paragraph (2) and (3) of the definition of Program would apply to ''general medical facilities'' and ''general medical practices'' under certain conditions. For example, an identified unit within a general medical facility or general medical practice will be subject to part 2 if it holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment, or if the primary function of medical personnel or other staff in the general medical facility or general medical practice is the provision of such services and they are identified as providing such services.

In Section III.D., Confidentiality Restrictions and Safeguards (§ 2.13), SAMHSA proposes to add a requirement that, upon request, patients who have included a general designation in the ''To Whom'' section of their consent form (see § 2.31) must be provided a list of entities to which their information has been disclosed pursuant to the general designation.

In Section III.E., Security for Records (§ 2.16), SAMHSA proposes to clarify that this section requires both part 2 programs and other lawful holders of patient identifying information to have in place formal policies and procedures addressing security, including sanitization of associated media, for both paper and electronic records.

In Section III.F., Disposition of Records by Discontinued Programs (§ 2.19), we propose to address both paper and electronic records. SAMHSA also is proposing to add requirements for sanitizing associated media.

In Section III.G., Notice to Patients of Federal Confidentiality Requirements (§ 2.22), we propose to clarify that the written summary of federal law and regulations may be provided to patients in either paper or electronic format. SAMHSA also proposes to require the statement regarding the reporting of violations include contact information for the appropriate authorities.

In Section III.H., Consent Requirements (§ 2.31), SAMHSA is proposing to allow, in certain circumstances, a patient to include a general designation in the ''To Whom'' section of the consent form, in conjunction with requirements that: (1) The consent form include an explicit description of the amount and kind of substance use disorder treatment information that may be disclosed; and (2) the ''From Whom'' section of the consent form specifically name the part 2 program or other lawful holder of the patient identifying information permitted to make the disclosure. SAMHSA also is proposing to require the part 2 program or other lawful holder of patient identifying information to include a statement on the consent form that the patient understands the terms of their consent and, when using a general designation in the ''To Whom'' section of the consent form, that they have a right to obtain, upon request, a list of entities to which their information has been disclosed pursuant to the general designation (see § 2.13). In addition, SAMHSA is proposing to permit electronic signatures to the extent that they are not prohibited by any applicable law.

In Section III.I., Prohibition on Re-disclosure (§ 2.32), we propose to clarify that the prohibition on re-disclosure only applies to information that would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both, and allows other health-related information shared by the part 2 program to be re-disclosed, if permissible under other applicable laws.

In Section III.J., Disclosures to Prevent Multiple Enrollments (§ 2.34), we propose to modernize the terminology and definitions and move the definitions to § 2.11, Definitions.

In Section III.K., Medical Emergencies (§ 2.51), we propose to revise the medical emergency exception to make it consistent with the statutory language and to give providers more discretion to determine when a ''bona fide medical emergency'' exists.

In Section III.L., Research (§ 2.52), SAMHSA proposes to revise the research exception to permit data protected by 42 CFR part 2 to be disclosed to qualified personnel for the purpose of conducting scientific research by a part 2 program or any other individual or entity that is in lawful possession of part 2 data if the researcher provides documentation of meeting certain requirements related to other existing protections for human research. SAMHSA also is proposing to address data linkages to enable researchers holding part 2 data to link to data sets from federal data repositories, and is seeking comment on expanding this provision to non-federal data repositories.

We propose, in Section III.M., Audit and Evaluation (§ 2.53), to modernize the requirements to include provisions for governing both paper and electronic patient records. SAMHSA also proposes to permit an audit or evaluation necessary to meet the requirements of a Centers for Medicare & Medicaid Services (CMS)-regulated accountable care organization (CMS-regulated ACO) or similar CMS-regulated organization (including a CMS-regulated Qualified Entity (QE)), under certain conditions.

C. Summary of Impacts

Our goal in modernizing the part 2 regulations is to increase opportunities for individuals with substance use disorders to participate in new and emerging health and health care models and health information technology (IT). Our intent is to facilitate the sharing of information within the health care system to support new models of integrated health care which, among other things, improve patient safety while maintaining or strengthening privacy protections for individuals seeking treatment for substance use disorders. We expect the proposed changes to 42 CFR part 2 to result in a decrease in the burdens associated with several aspects of this rule, including consent requirements. Moreover, as patients are allowed, in certain circumstances, to include a general designation in the ''To Whom'' section of the consent form, we anticipate there

would be more individuals with substance use disorders participating in organizations that facilitate the exchange of health information (*e.g.,* health information exchanges (HIEs)) and organizations that coordinate care (*e.g.,* accountable care organizations (ACOs) and coordinated care organizations (CCOs)), leading to increased efficiency and quality in the provision of health care for this population.

When estimating the total costs associated with changes to the 42 CFR part 2 regulations, we assumed five sets of costs: Updates to health IT system costs, costs for staff training and updates to training curricula, costs to update patient consent forms, costs associated with providing patients a list of entities to which their information has been disclosed pursuant to a general designation on the consent form (*i.e.,* the List of Disclosures requirement), and implementation costs associated with the List of Disclosure requirements. We assumed that costs associated with modifications to existing health IT systems, staff training costs associated with updating staff training materials, and costs to update consent forms would be one-time costs the first year the final rule is in effect and would not carry forward into future years. Staff training costs other than those associated with updating training materials are assumed to be ongoing annual costs to part 2 programs, also beginning in the first year that the final rule is in effect. The List of Disclosures costs are assumed to be ongoing annual costs to entities named on a consent form that disclose patient identifying information to their participants under the general designation. The List of Disclosures requirement, however, does not go into effect until two years after the final rule is in effect. Therefore, in years 1 and 2, the costs associated with the List of Disclosures provision are limited to implementation costs for entities that chose to upgrade their health IT systems in order to comply with the List of Disclosure requirements.

We estimate, therefore, that in the first year that the final rule is in effect, the costs associated with updates to 42 CFR part 2 would be $74,217,979. In year two, we estimate that costs would be $47,021,182. In years 3 through 10, we estimate the annual costs would be $14,835,444. Over the 10-year period 2015–2024, the total undiscounted cost of the proposed changes would be $239,922,716 in 2015 dollars. When future costs are discounted at 3 percent or 7 percent per year, the total costs become approximately $220.9 million or $200.9 million, respectively.

Based on data from the 2013 National Survey of Substance Abuse Treatment Services (N–SSATS), we estimate that 12,034 hospitals, outpatient treatment centers, and residential treatment facilities are covered by part 2. N–SSATS is an annual survey of U.S. substance abuse treatment facilities. Data is collected on facility location, characteristics, and service utilization. Not all treatment providers included in N–SSATs are believed to be under the jurisdiction of the part 2 regulations. The 12,034 number is a subset of the 14,148 substance abuse treatment facilities that responded to the 2013 N–SSATS, and includes all federally operated facilities, facilities that reported receiving public funding other than Medicare and Medicaid, facilities that reported accepting Medicare, Medicaid, TRICARE, and/or Access to Recovery (ATR) voucher payments, or were SAMHSA-certified Opioid Treatment Programs.

If an independently practicing clinician does not meet the requirements of paragraph (1) of the definition of Program (an individual or entity (other than a general medical facility or general medical practice) who holds itself out as providing and provides substance use disorder diagnosis, treatment or referral for treatment), they may be subject to 42 CFR part 2 if they constitute an identified unit within a general medical facility or general medical practice which holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment, or if their primary function in the facility or practice is the provision of such services and they are identified by the facility or practice as providing such services. Due to data limitations, it was not possible to estimate the costs for independently practicing providers covered by part 2 that did not participate in the 2013 N–SSATS. For example, data from the American Board of Addiction Medicine (ABAM) provides the number of physicians since 2000, who have active ABAM certification. However, there is no source for the number of physicians who have not participated in the ABAM certification process. In addition, it is not possible to determine which ABAM-certified physicians practice in a general medical setting rather than in a specialty treatment facility that was already counted in the N–SSATS data.

Several provisions in the Notice of Proposed Rulemaking (NPRM) reference other lawful holders of patient identifying information in combination with part 2 programs. These other lawful holders must comply with part 2 requirements with respect to information they maintain that is covered by part 2 regulations. However, because this group is not clearly defined with respect to the range of organizations it may include, we are unable to include estimates regarding the number and type of these organizations and are only including part 2 programs in this analysis.

In addition to the part 2 programs described above, entities named on a consent form that disclose patient identifying information to their participants under the general designation must provide patients, upon request, a list of entities to which their information has been disclosed pursuant to a general designation. These entities primarily would include organizations that facilitate the exchange of health information (*e.g.,* HIEs), and also may include organizations responsible for care coordination (*e.g.,* ACOs, CCOs, and patient-centered medical homes (sometimes called health homes)). While these types of organizations were the primary focus of this provision on the consent form, other types of entities, such as research institutions, also may disclose patient identifying information to their participants (*e.g.,* clinical researchers) pursuant to the general designation on the consent form. Because there are no definitive data sources for this potential range of organizations, we are not associating List of Disclosures requests with any particular type of organization. Instead, we chose to estimate the number of organizations that must respond to List of Disclosures requests based on the total number of requests each year.

II. Background

A. Significant Technology Changes

Since the promulgation of 42 CFR part 2, significant technology changes have impacted the delivery of health care. The Office of the National Coordinator for Health Information Technology (ONC) was established as an office within the Department of Health and Human Services (HHS) under Executive Order 13335 on April 27, 2004. Subsequently, on February 17, 2009, the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5) expanded the Department's health IT work, including the expansion of ONC's authority and the provision of federal funds for ONC's activities consistent with the

development of a nationwide health IT infrastructure. This work included the certification of health IT; the authorization of CMS' Electronic Health Record (EHR) Incentive Program, including payments to eligible providers for the adoption and meaningful use of certified EHR technology; and numerous other federal agencies' programs—all of which served the objective of ensuring patient health information is secure, private, accurate, and available where and when needed.

SAMHSA has played a role in encouraging the use of health IT by behavioral health (substance use disorders and mental health) providers. SAMHSA's efforts included collaborating with ONC to develop two sets of Frequently Asked Questions and convening a number of stakeholder meetings to provide guidance on the application of 42 CFR part 2 within HIE models. In addition, SAMHSA funded a one-year pilot project in 2012 with five state HIEs to support the exchange of health information among behavioral health and physical health providers. SAMHSA also worked with ONC and other federal agencies on several projects to support behavioral health and health information exchange.

The Data Segmentation for Privacy (DS4P) initiative within ONC's Standards and Interoperability (S&I) Framework facilitated the development of standards to improve the interoperability of EHRs containing sensitive information that must be protected to a greater degree than other health information due to 42 CFR part 2 and similar state laws. The DS4P initiative met its two goals, which were to: Demonstrate how standards can be used to support current privacy policies for sharing sensitive health information across organizational boundaries; and develop standards that will enable sensitive electronic health information to flow more freely to authorized users while improving the ability of health IT systems to implement current privacy protection requirements for certain types of health care data, such as substance use disorder patient records. The S&I Framework is a collaborative community of contributors from the public and private sectors who are focused on providing the tools, services, and guidance to facilitate the electronic exchange of health information. The DS4P initiative involved 344 volunteers, including, but not limited to, federal and state government agencies, behavioral health providers, EHR and other IT companies, health information exchanges, patient advocacy groups, professional societies/associations, consultants, health systems, health insurers, and universities.

Through the DS4P initiative, federal and community stakeholders developed standards and guidelines for enabling data segmentation and managing patient consent preferences. The technical approach outlined in the DS4P Implementation Guide (IG) is based on the experience of the six pilot projects and the solutions they developed to meet the DS4P project requirements. The DS4P IG is an American National Standards Institute (ANSI) approved standard. It was also voted on and approved at the highest level to become what Health Level 7 (HL7) calls a normative standard (a foundational part of the technology needed to meet the global challenge of integrating health care information). The HL7 balloting process included 155 stakeholders, including HL7 affiliates, vendors, consultants, payers, providers, non-profit organizations, and federal government representatives. The HL7 standard is the currently acceptable standard for data segmentation and consent management. In addition, it is in compliance with 42 CFR part 2.

The six DS4P IG use case pilot projects that were conducted in accordance with ONC's S&I Framework included the Department of Veterans Affairs (VA)/Substance Abuse and Mental Health Services Administration (SAMHSA) Pilot. The VA/SAMHSA Pilot implemented all the DS4P use cases and passed all conformance tests. The VA/SAMHSA Pilot was also the first application to show that managing consents and patient directives, as well as segmenting structured data in a patient record, can be done. SAMHSA used these DS4P standards to develop the application branded Consent2Share, an open-source health IT solution which assists in consent management and data segmentation. Consent2Share validates that the DS4P IG can be used to build a production-based application to manage the patient consent lifecycle electronically. The Consent2Share software is currently being used by the Prince Georges County (Maryland) Health Department to manage patient consent directives while sharing substance use disorder information with an HIE. While this technology is not perfect, it provides a foundational standard and shows promise for sharing substance use disorder information while complying with 42 CFR part 2.

Notwithstanding these efforts, SAMHSA is aware that technology adoption is an ongoing process and the majority of current EHR and HIE applications may not have the capability to support the DS4P initiative. In addition, paper records are still used today in some part 2 programs and shared through facsimile (FAX). Despite SAMHSA's efforts to clarify the part 2 regulations through guidance and to demonstrate that exchange of sensitive health information can be accomplished through pilot projects that adhere to the regulations, some stakeholders continued to request modernization of 42 CFR part 2. These stakeholders are concerned that part 2, as currently written, continues to be a barrier to the integration of substance use disorder treatment and physical health care. For example, some substance use disorder treatment centers cannot participate in integrated care models because they have not implemented data segmentation and consent management functionalities necessary to comply with the part 2 rules. Further, under the current regulations, the part 2 program director is the only individual authorized to release of information for scientific research purposes. In addition, under the current regulatory framework, absent consent, organizations that store patient health data, including data that are subject to part 2, do not have the authority to disclose part 2 data for scientific research purposes to qualified researchers or research organizations. This could hinder a full understanding of impacts of treatment for addiction and other health issues. Finally, some stakeholders continue to request modernization of the part 2 rules, in media and other public and private forums.

B. Statutory and Rulemaking History

The Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2, implement section 543 of the Public Health Service Act, 42 United States Code (U.S.C.) § 290dd–2, as amended by section 131 of the Alcohol, Drug Abuse and Mental Health Administration Reorganization Act (ADAMHA Reorganization Act), Pub. L. 102–321 (July 10, 1992). The regulations were promulgated as a final rule on July 1, 1975 (40 FR 27802). In 1980, the Department invited public comment on 15 substantive issues arising out of its experience interpreting and implementing the regulations (45 FR 53). More than 450 public responses to that invitation were received and taken into consideration in the preparation of a 1983 NPRM (48 FR 38758). Approximately 150 comments were received in response to the NPRM and were taken into consideration in the preparation of the final rule released on June 9, 1987 (52 FR 21798).

The Department published a NPRM again in the **Federal Register** (FR) on August 18, 1994 (59 FR 42561), which proposed a clarification of the definition of ''Program'' in the regulations. Specifically, the Department proposed to clarify that, as to general medical care facilities, these regulations cover only specialized individuals or units in such facilities that hold themselves out as providing and provide alcohol or drug abuse diagnosis, treatment, or referral for treatment and which are federally assisted, directly or indirectly. On May 5, 1995, the final rule was released (60 FR 22296).

SAMHSA posted a document in the **Federal Register** on May 12, 2014, (79 FR 26929) announcing a public Listening Session planned for June 11, 2014, to solicit feedback on the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR part 2. SAMHSA accepted written comments until June 25, 2014.

In the **Federal Register** notification for the public Listening Session (79 FR 26929), SAMHSA invited general comments, as well as comments on six key provisions of 42 CFR part 2: Applicability, Consent requirements, Re-disclosure, Medical emergency, QSO, and Research. In addition, SAMHSA solicited input on electronic prescribing and Prescription Drug Monitoring Programs (PDMPs), areas that could potentially impact part 2 programs. Approximately 1,800 individuals participated in the listening session, either in person or by phone. During the session, 112 oral comments were made, while another 635 written comments were submitted during the written comment period. The Listening Session comments are posted on the SAMHSA Web site at *http://www.samhsa.gov/about-us/who-we-are/laws-regulations/public-comments-confidentiality-regulations.* In general, commenters supported updating the regulations or opposed it. Some commenters proposed aligning 42 CFR part 2 with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations. However, due to its targeted population, part 2 provides more stringent federal protections than most other health privacy laws, including HIPAA. We are choosing not to address any specific comments or summarize comments in detail in this proposed rule. However, all the feedback received from the Listening Session was considered and helped to inform the development of this NPRM. In addition, SAMHSA collaborated with its federal partner experts in developing this NPRM.

SAMHSA decided not to address issues pertaining to e-prescribing and PDMPs in this NPRM. SAMHSA concluded that the part 2 program e-prescribing and PDMPs are not ripe for rulemaking at this time due to the state of technology and because the majority of part 2 programs are not prescribing controlled substances electronically. SAMHSA intends to monitor developments in this area to see whether further action may be warranted in the future.

III. Provisions of This Proposed Rule

The intent of this NPRM is to propose revisions to key provisions of 42 CFR part 2 to modernize the regulations adopted in the June 1987 final rule and amended by the May 1995 final rule. This modernization is necessary because behavioral health, including substance use disorder treatment, is essential to overall health; the costs of untreated substance use disorders, both personal and societal, are substantial; and there continues to be a need for confidentiality protections that encourage patients to seek treatment without fear of compromising their privacy.

Individuals seeking treatment for substance use disorders often are met with a host of negative reactions including discrimination and harm to their reputations and relationships. In addition, there is a potential for serious civil and criminal consequences for the disclosure of patient identifying information associated with substance use disorders beyond the health care context. We are mindful of the intent of the governing statute (42 U.S.C. 290dd–2) and regulations at 42 CFR part 2, which is to protect the confidentiality of substance abuse patient records so as not to make an individual receiving treatment for a substance use disorder in a part 2 program more vulnerable by virtue of seeking treatment than an individual with a substance use disorder who does not seek treatment. SAMHSA strives to facilitate information exchange within new and emerging health and health care models, which promote integrated care and patient safety, while respecting the legitimate privacy concerns of patients seeking treatment for a substance use disorder due to the potential for discrimination, harm to their reputations and relationships, and serious civil and criminal consequences. SAMHSA also is mindful that any regulatory changes contemplated must be consistent with the authorizing legislation (42 U.S.C. 290dd–2) and its statutory intent.

This proposed rule also proposes editorial changes. SAMHSA deleted references to 42 U.S.C. 290ee–3 and 42 U.S.C. 290dd–3 in § 2.1, Statutory authority for confidentiality of drug abuse patient records, and § 2.2, Statutory authority for confidentiality of alcohol abuse patient records. Sections 290dd–3 and 290ee–3 were omitted by Public Law 102–321 and combined and renamed into Sections 290dd–2, Confidentiality of records. We also combined §§ 2.1 and 2.2 and propose to rename the new § 2.1 (Statutory authority for confidentiality of substance abuse patient records) and re-designate §§ 2.2–2.5. In addition, we deleted references to laws and regulations that have been repealed in § 2.21. Finally, we made editorial changes throughout the regulations to increase clarity and consistency.

Along with proposing substantive revisions to various sections of 42 CFR part 2, SAMHSA has proposed a number of technical, non-substantive changes for clarity and consistency that are reflected throughout the regulations. For the convenience of the public, SAMHSA is reprinting the text of 42 CFR part 2 in its entirety, which includes the proposed modifications incorporated into the existing provisions. SAMHSA, however, is only seeking comment on the proposed changes to the regulations that are discussed in the preamble of this NPRM. Sections of 42 CFR part 2 that have not been proposed for revision are not subject to review or comment under this NPRM.

A. Reports of Violations (§ 2.4)

1. Overview

In the current regulations, methadone programs are required to report violations of these regulations to the FDA.

2. Proposed Revisions

We propose to revise the requirement (§ 2.5(b)) of reporting violations of these regulations by a methadone program to the FDA. The authority over methadone programs (now referred to as opioid treatment programs) was transferred from the FDA to SAMHSA in 2001 (66 FR 4076). Suspected violations of 42 CFR part 2 by opioid treatment programs may be reported to the U.S. Attorney's Office for the judicial district in which the violation occurred, as well as the SAMHSA office responsible for opioid treatment program oversight.

B. Definitions (§ 2.11)

1. Overview

Certain defined terms in the current regulations are used inconsistently. SAMHSA also received inquiries regarding certain terms and how they apply to new health care models. In addition, the current regulations include definitions in four different sections (§§ 2.11, 2.12, 2.14 and 2.34).

2. Proposed Revisions

SAMHSA proposes to consolidate all of the definitions, with the exception the definition of the term ''Federally assisted,'' in a single section at § 2.11. SAMHSA proposes to retain the definition of the term ''Federally assisted'' in the Applicability provision at § 2.12 for the purpose of clarity because it is key to understanding the applicability of 42 CFR part 2. We encourage readers to review all of the definitions, since a clear understanding of the regulations builds on an understanding of the definitions and their inter-relationships.

a. New Definitions

i. Part 2 Program

The current regulations define ''Federally assisted'' separately from the term ''Program'' but do not define the term ''Part 2 program.'' In addition, the terms ''Program'' and ''federally assisted alcohol or drug abuse program'' are used interchangeably. Therefore, SAMHSA proposes to define a ''Part 2 program'' as a federally assisted program (federally assisted as defined in § 2.12(b) and program as defined in § 2.11). See § 2.12(e)(1) for examples.

We proposed to retain the examples provided in § 2.12(e)(1) of the current regulations, with a clarification, because they explain the part 2 applicability and coverage.

SAMHSA proposes to replace the term ''Program'' with ''Part 2 program,'' where appropriate. For example, we propose to revise the definition of QSO, including replacing ''Program'' with ''Part 2 program,'' which is discussed in depth below (see Section III.B.2.b., Existing Definitions). We also propose to replace ''Program'' with ''Part 2 program'' in several other definitions, while making no additional changes.

ii. Part 2 Program Director

Because of the addition of the ''Part 2 program'' definition, we also are proposing to define a ''Part 2 program director'' as:

- In the case of a part 2 program which is an individual, that individual, and
- In the case of a part 2 program which is an entity, the individual designated as director or managing director, or individual otherwise vested with authority to act as chief executive officer of the part 2 program.

We propose to delete the definition of ''Program director.''

iii. Substance Use Disorder

SAMHSA proposes to refer to alcohol abuse and drug abuse collectively as ''Substance use disorder'' and, when referring to the authorizing statute, use ''substance abuse'' since that is the term used in Title 42, United States Code, Section 290dd–2. SAMHSA also uses the term ''substance abuse'' when referencing information from other publications that use that term. SAMHSA proposes to use the term ''Substance use disorder'' to be consistent with recognized classification manuals, current diagnostic lexicon, and commonly used descriptive terminology, and, for consistency, proposes to revise the title of 42 CFR part 2 from ''Confidentiality of Alcohol and Drug Abuse Patient Records'' to ''Confidentiality of Substance Use Disorder Patient Records.''

While SAMHSA proposes to delete the definitions of ''Alcohol abuse'' and ''Drug abuse,'' we continue to use the terms ''Alcohol abuse'' and ''Drug abuse'' when referring to 42 U.S.C. 290dd–3 and 42 U.S.C. 290ee–3 (omitted by Pub. L. 102–321 and combined and renamed into Section 290dd–2), respectively, because they are the terms used in the outdated statutes. See § 2.11 of the current regulations for definitions of the terms ''Alcohol abuse'' and ''Drug abuse''.

SAMHSA proposes to define the term ''Substance use disorder'' in such a manner as to cover substance use disorders that can be associated with altered mental status that has the potential to lead to risky and/or socially prohibited behaviors, including, but not limited to, substances such as, alcohol, cannabis, hallucinogens, inhalants, opioids, sedatives, hypnotics, anxiolytics, and stimulants. In addition, SAMHSA proposes to clarify that, for the purposes of these regulations, the definition excludes both tobacco and caffeine.

iv. Treating Provider Relationship

As noted in more detail in Section III.H., Consent Requirements, SAMHSA has heard a number of concerns from stakeholders regarding the current consent requirements in § 2.31 of the regulations. SAMHSA is proposing to revise the consent requirements to permit, in certain circumstances, a more general description of the individuals or entities to which a disclosure is made, but only if the individuals or entities have a treating provider relationship with the patient whose information is being disclosed. This change, therefore, creates a need to define a treating provider relationship.

A treating provider relationship begins when an individual seeks health-related assistance from an individual or entity who may provide assistance. However, the relationship is clearly established when the individual or entity agrees to undertake diagnosis, evaluation and/or treatment of the patient, or consultation with the patient, and the patient agrees to be treated, whether or not there has been an actual in-person encounter between the individual or entity and patient. A treating provider relationship with a patient may be established by a health care provider or another member of a health care team as long as the relationship meets the definition of ''Treating provider relationship.''

A treating provider relationship means that, regardless of whether there has been an actual in-person encounter:

- A patient agrees to be diagnosed, evaluated and/or treated for any condition by an individual or entity, and
- The individual or entity agrees to undertake diagnosis, evaluation and/or treatment of the patient, or consultation with the patient, for any condition.

The term ''agrees'' as used in the definition does not necessarily imply a formal written agreement. An agreement might be evidenced, among other things, by making an appointment or by a telephone consultation.

v. Withdrawal Management

SAMHSA proposes to update the terminology in § 2.34. We propose to delete the definition of ''Detoxification treatment'' and replace it with the definition of the currently acceptable term, ''Withdrawal management.'' We also propose to move this definition from § 2.34 to § 2.11 to consolidate definitions in one section of the regulations.

b. Existing Definitions

SAMHSA proposes to update terminology in existing definitions to accurately convey the meaning of terms and increase the understandability of the proposed rule. In addition, SAMHSA proposes to consolidate all but one of the defined terms in § 2.11.

i. Central Registry

SAMHSA proposes to update the terminology in § 2.34 and move this

definition from § 2.34 to § 2.11 to consolidate definitions.

We are proposing to revise the definition to incorporate currently accepted terminology.

ii. Disclose or Disclosure

We propose to define only one word, ''Disclose,'' since it is implied that the same definition applies to other forms of the word. We also propose to update terminology and make the definition clearer.

iii. Maintenance Treatment

SAMHSA proposes to update the terminology in § 2.34 and move this definition from § 2.34 to § 2.11 to consolidate definitions.

iv. Member Program

SAMHSA proposes to update the terminology in § 2.34 and move this definition from § 2.34 to § 2.11 to consolidate definitions.

v. Patient

To emphasize that the term ''Patient'' refers to both current and former patients, SAMHSA proposes to revise the definition to provide that a patient is any individual who has applied for or been given diagnosis, treatment, or referral for treatment for a substance use disorder at a part 2 program. Patient includes any individual who, after arrest on a criminal charge, is identified as an individual with a substance use disorder in order to determine that individual's eligibility to participate in a part 2 program. This definition includes both current and former patients.

vi. Patient Identifying Information

SAMHSA proposes to clarify that ''Patient,'' as used in this definition, is a defined term in § 2.11. In addition, SAMHSA deleted the words ''and speed.'' If the information could identify the patient, the speed with which it identifies the patient is not relevant.

vii. Person

The current definition of ''Person'' includes both individuals and entities. For the purpose of this proposed regulation, SAMHSA considers an ''individual'' to be a human being. SAMHSA proposes to revise the definition of ''Person'' to clearly indicate that ''Person'' is also referred to as individual and/or entity.

viii. Program

SAMHSA is proposing to make the following changes to the ''Program'' definition. First, because the current definition of ''Program'' includes both the terms ''general medical care facility'' and ''general medical facility,'' and because these terms are used interchangeably, we are proposing to consistently use the term ''general medical facility.''

Second, more substance use disorder treatment services are occurring in general health care and integrated care settings, which are typically not covered under the current regulations. Providers who in the past offered only general or specialized health care services (other than substance use disorder services) now, on occasion, provide substance use disorder treatment services, but only as incident to the provision of general health care. Therefore, SAMHSA proposes to make clear that paragraph (1) of the definition of ''Program'' would *not* apply to ''general medical facilities'' and ''general medical practices.'' However, paragraphs (2) and (3) of the definition of ''Program'' would apply to ''general medical facilities'' and ''general medical practices.'' Finally, SAMHSA is proposing to move the reference to examples from the definition of ''Program'' to the definition of ''Part 2 program'' because 42 CFR part 2 would apply only to ''Part 2 programs'' as defined in the proposed regulations.

The inclusion of general medical practices with general medical facilities is consistent with SAMHSA's intention to ensure confidentiality protections and access to treatment for individuals whose identity as substance use disorder patients would be compromised if records of the specialized programs from which they seek treatment were not covered by these regulations while not unnecessarily imposing requirements on general medical facilities or practices in an overly broad manner.

Consistent with the definition of ''Program'':

1. If a provider is *not* a general medical facility or general medical practice, then the provider meets the part 2 definition of a ''Program'' if it is an individual or entity who holds itself out as providing, *and* provides substance use disorder diagnosis, treatment, or referral for treatment.

2. If the provider is an identified unit within a general medical facility or general medical practice, it is a ''Program'' if it holds itself out as providing, *and* provides, substance use disorder diagnosis, treatment or referral for treatment.

3. If the provider consists of medical personnel or other staff in a general medical facility or general medical practice, it is a ''Program'' if its primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment *and* is identified as such specialized medical personnel or other staff by the general medical facility or general medical practice.

While the term ''general medical facility'' is not defined at 42 CFR 2.11 (Definitions), hospitals, trauma centers, or federally qualified health centers would generally be considered ''general medical facilities.'' Therefore, primary care providers who work in such facilities would only be covered by the part 2 definition of a ''Program'' if: (1) They work in an identified unit within such general medical facility that holds itself out as providing, *and* provides, substance use disorder diagnosis, treatment or referral for treatment, or (2) the primary function of the providers is substance use disorder diagnosis, treatment or referral for treatment *and* they are identified as providers of such services by the general medical facility.

In addition, a practice comprised of primary care providers could be considered a ''general medical practice.'' As such, an identified unit within that general medical practice that holds itself out as providing *and* provides substance use disorder diagnosis, treatment, or referral for treatment would be considered a ''Program'' as defined in § 2.11 of these regulations. In addition, medical personnel or staff within that general medical practice whose primary function is the provision of substance use disorder services *and* who are identified as such providers by the general medical practice would qualify as a ''Program'' under the definition in these part 2 regulations.

Finally, ''Holds itself out'' is currently not defined in § 2.11, Definitions. SAMHSA has previously published guidance relative to the term and proposes to add an explanation of ''Holds itself out'' to the Preamble discussion in § 2.12, Applicability. Consistent with that guidance, ''Holds itself out'' means any activity that would lead one to reasonably conclude that the individual or entity provides substance use disorder diagnosis, treatment, or referral for treatment including but not limited to:

- Authorization by the state or federal government (*e.g.* licensed, certified, registered) to provide, and provides, such services,
- Advertisements, notices, or statements relative to such services, or
- Consultation activities relative to such services.

As is the case throughout these regulations, understanding all defined terms is important. In the case of the definition of ''Program'' and how it

relates to the applicability of these regulations (see § 2.12), two other definitions are particularly relevant: ''Diagnosis,'' and ''Treatment.'' See § 2.11 of the proposed regulations for the definitions of ''Diagnosis'' and ''Treatment.''

ix. Qualified Service Organization

A qualified service organization (QSO) is an individual or entity (see definition of ''Person,'' above) that provides a service to a part 2 program consistent with a qualified service organization agreement (QSOA). A QSOA is a two-way agreement between a part 2 program and the individual or entity providing the desired service. Under the current statutory authority, patient records pertaining to substance abuse may be shared only with the prior written consent of the patient or under a few limited exceptions that are specifically enumerated in 42 U.S.C. 290dd-2. However, § 2.12(c)(4) indicates that these restrictions on disclosure do not apply to communications between a part 2 program and a QSO regarding information needed by the QSO to provide services to the part 2 program consistent with the QSOA. Accordingly, SAMHSA has consistently articulated in applicable guidance that a QSO would be permitted to disclose the part 2 information to a contract agent if it needs to do so in order to provide the services described in the QSOA, and as long as the agent only discloses the information back to the QSO or the part 2 program from which the information originated. If a disclosure is made by the QSO to an agent acting on its behalf to perform the service, both the QSO and the agent are bound by the part 2 regulations, and neither organization can disclose the information except as permitted by part 2 and SAMHSA's interpretive guidance.

Recognizing the importance of population health management, SAMHSA proposes to revise the definition of QSO to include population health management in the list of examples of services a QSO may provide. Population health management refers to increasing desired health outcomes and conditions through monitoring and identifying individual patients within a group. To achieve the best outcomes, providers must supply proactive, preventive, and chronic care to all of their patients, both during and between encounters with the health care system. For patients with substance use disorders, who often have comorbid conditions, proactive, preventive, and chronic care is important to achieving desired outcomes.

Any QSOA executed between a part 2 program and an organization providing population health management services would be limited to the office or unit responsible for population health management in the organization (*e.g.,* the ACO, CCO, patient-centered medical home (sometimes called health home), or managed care organization), not the entire organization and not its participants (*e.g.,* case managers, physicians, addiction counselors, hospitals, and clinics). Once a QSOA is in place, 42 CFR part 2 permits the part 2 program to communicate information from patients' records to the organization providing population health management services as long as it is limited to information needed by the organization to provide such services to the part 2 program. An organization providing population health management services may disclose part 2 information that it has received from a part 2 program to its participants (other than the originating part 2 program) only if the patient signs a part 2-compliant consent form agreeing to those disclosures.

SAMHSA's proposal to add population health management to the list of examples of the services that may be offered by a QSO is consistent with the Affordable Care Act (Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148)) and the HHS Strategic Plan FY 2014–2018 which includes the goals of improving health care and population health through meaningful use of health IT. We believe this revision would benefit patients' health, safety, and quality of life while maintaining the confidentiality protections that attach to the part 2 program's patient records.

SAMHSA also proposes to revise the term ''medical services'' as listed in the examples of permissible services offered by a QSO to clarify that it is limited to ''medical staffing services.'' SAMHSA proposes to make this revision to emphasize that QSOAs should not be used to avoid obtaining patient consent. Accordingly, a QSOA could be used by a part 2 program to contract with a provider of on-call coverage services (previously clarified in guidance) or other medical staffing services but could not be used to disclose John Doe's patient identifying information to his primary care doctor for the purpose of treatment (other than that provided under a QSOA for medical staffing services). However, an individual or entity who is prohibited from providing treatment to an individual patient under a QSOA, may still meet the requirements of having a treating provider relationship (based on the definition in § 2.11) with respect to the Consent Requirements in § 2.31. Likewise, care coordination was not added to the list of examples of permissible services offered by a QSO because care coordination has a patient treatment component.

x. Records

Consistent with the goal of modernizing the regulations, SAMHSA proposes to revise the definition of ''*Records*'' to include any information, whether recorded or not, received or acquired by a part 2 program relating to a patient. For the purpose of these regulations, records include both paper and electronic records.

xi. Treatment

As part of its effort to modernize these regulations, SAMHSA is proposing to delete the term, ''management,'' from the ''Treatment'' definition. In today's health care environment, ''management'' has a much broader meaning than it did when the regulations were last revised.

c. Terminology Changes

In addition to proposing changes to several definitions, we propose the following terminology changes. These changes are intended to ensure consistency in the use of terms throughout the regulations, and to increase the understandability of the proposed rule.

The current regulations use a variety of terms to refer to law enforcement (*e.g.,* ''office,'' ''agency or official,'' and ''authorities'') as well as using related terms (*e.g.,* ''persons or individuals within the criminal justice system''. We propose to consistently refer to law enforcement as ''law enforcement agencies or officials.'' In addition, the current regulations use the terms ''organization'' and ''entity.'' Neither term is defined but ''entity'' is included in both the definition of ''Program'' and ''Person.'' For this reason, we propose to use the term ''entity'' instead of ''organization'' wherever possible. Finally, because we have revised the definition of ''Patient'' to clarify that it includes both current and former patients, we have revised the grammar, where appropriate.

For the purposes of this regulation, we also propose that the term ''written'' include both paper and electronic documentation. In addition, we propose to use the phrase ''part 2 program or other lawful holder of patient identifying information'' to refer to a part 2 program or other individual or entity that is in lawful possession of patient identifying information. A

''lawful holder'' of patient identifying information is an individual or entity who has received such information as the result of a part 2-compliant patient consent (with a re-disclosure notice) or as a result of one of the limited exceptions to the consent requirements specified in the regulations and, therefore, is bound by 42 CFR part 2. Examples of such ''lawful holders'' of patient identifying information include a patient's treating provider, a hospital emergency room, an insurance company, an individual or entity performing an audit or evaluation, or an individual or entity conducting scientific research. We are not making any specific proposals with regard to ''unlawful holders'' of patient identifying information in this NPRM because unlawful holders are addressed in § 2.3 Criminal penalty for violation.

A patient who has obtained a copy of their records or a family member who has received such information from a patient would not be considered a ''lawful holder of patient identifying information'' in this context. As stated in § 2.23(a), the regulations do not prohibit a part 2 program from giving a patient access to their own records, including the opportunity to inspect and copy any records that the part 2 program maintains about the patient. The part 2 program is not required to obtain a patient's written consent or other authorization under these regulations in order to provide such access to the patient or their legal representative.

C. Applicability (§ 2.12)

1. Overview

The 1987 regulations (52 FR 21798) limited the applicability of 42 CFR part 2 to specialized programs, (*i.e.,* to those federally assisted programs that hold themselves out as providing and which actually provide alcohol or drug abuse diagnosis, treatment, and referral for treatment). HHS took the position that limiting the applicability to specialized programs would simplify the administration of the regulations without significantly affecting the incentive to seek treatment provided by the confidentiality protections. Applicability to specialized programs lessened the adverse economic impact on a substantial number of facilities that provided substance use disorder care only as an incident to the provision of general medical care.

2. Proposed Revisions

SAMHSA considered options for defining what information is covered by 42 CFR part 2, including the option of defining covered information based on the type of substance use disorder treatment services provided instead of the type of facility providing the services. SAMHSA, however, rejected that approach because more substance use disorder treatment services are occurring in general health care and integrated care settings, which typically are not covered under the current regulations. Providers who in the past offered only general or specialized health care services (other than substance use disorder services) now, on occasion, provide substance use disorder treatment services, but only as incident to the provision of general health care.

As discussed in Section III.B.2.b., Existing Definitions, we propose to revise the definition of ''Program'' to align it more closely with current health care delivery models. SAMHSA proposes to make clear that paragraph (1) of the definition of ''Program'' would not apply to ''general medical facilities'' and ''general medical practices.'' However, paragraphs (2) and (3) of the definition of ''Program'' would apply to ''general medical facilities'' and ''general medical practices.''

SAMHSA also proposes to include the term ''Part 2 program,'' as discussed in Section III.B.2.a.i. The definition of ''Program'' in § 2.11 did not explicitly include ''Federally assisted as defined in § 2.12(b)''. As a result, we are proposing to add a definition of ''Part 2 program.'' We propose to define the term and to use the term ''Part 2 program,'' where appropriate, throughout the proposed regulations.

This approach is consistent with the approach taken in 1987 because it essentially limits the applicability of 42 CFR part 2 to specialized programs, which simplifies the administration of the regulations without significantly affecting the incentive to seek treatment provided by the confidentiality protections. We do not foresee that the exclusion from part 2 coverage of health care providers who work in general medical practices and provide substance use disorder treatment services as incident to the provision of general health care would act as a deterrent to individuals seeking assistance for substance use disorders.

In addition, in the current regulation, § 2.12(d)(2)(iii), restrictions on disclosures apply to individuals or entities who have received patient records directly from part 2 programs. SAMHSA proposes to revise § 2.12(d)(2)(iii) so that restrictions on disclosures also apply to individuals or entities who receive patient records directly from other lawful holders of patient identifying information. This change is consistent with the discussion of ''other lawful holder of patient identifying information'' in the preamble discussion in Terminology Changes in Section III.B.2.c. and the proposed inclusion of this term in other sections of this NPRM. Patient records subject to these regulations include patient records maintained by part 2 programs as well as those records in the possession of ''other lawful holders of patient identifying information.''

D. Confidentiality Restrictions and Safeguards (§ 2.13)

1. Overview

Currently, 42 CFR part 2 does not include a way for patients to determine to whom their records have been disclosed.

2. Proposed Revisions

As discussed in Section G., Consent Requirements (§ 2.31), SAMHSA proposes to permit, in certain circumstances, the inclusion of a general designation in the ''To Whom'' section of the consent form. Specifically, in the case of an entity that does not have a treating provider relationship with the patient whose information is being disclosed, SAMHSA proposes to permit the designation of the name(s) of the entity(-ies) and a general designation of an individual or entity participant(s) or a class of participants that must be limited to those participants who have a treating provider relationship with the patient whose information is being disclosed. An entity without a treating provider relationship includes, for example, an entity that facilitates the exchange of health information (*e.g.,* HIE). The consent form, therefore, could designate the HIE (an entity that does not have a treating provider relationship with the patient whose information is being disclosed) and ''my treating providers'' (a general designation of a class of individual and/or entity participants with a treating provider relationship with that same patient). Under this proposal, the consent form could not, however, include the general function ''HIE'' without specifying the name of the HIE entity used by the treating provider. Under this proposal, merely listing a function is not sufficient for consent because it would not sufficiently identify the recipient of the patient identifying information. Since SAMHSA is proposing to allow a general designation in the circumstances discussed above, we are proposing that, upon request, patients who have included a general

designation in the ''To Whom'' section of their consent form must be provided, by the entity without a treating provider relationship that serves as an intermediary (see § 2.31(a)(4)(iv)), a list of entities to which their information has been disclosed pursuant to the general designation (List of Disclosures).

SAMHSA is proposing to require that the list of disclosures include a list of the entities to which the information was disclosed pursuant a general designation. However, if entities that are required to comply with the List of Disclosures requirement wish to include individuals on the list of disclosures, in addition to the required data elements which are outlined in § 2.13(d)(2)(ii), nothing in this proposed rule prohibits it.

SAMHSA considered requiring both individuals and entities to be included on the list of disclosures but, after reviewing the Health Information Technology Privacy Committee's recommendations, decided to require, at a minimum, a list of entities. These recommendations addressed the HITECH requirement that HIPAA covered entities and business associates account for disclosures for treatment, payment, and health care operations made through an EHR. The Committee recommended, ''that the content of the disclosure report be required to include only an entity name rather than a specific individual as proposed in the NPRM.'' In addition, the report noted that the Organization for Economic Cooperation and Development (OECD) principles, the Fair Credit Reporting Act, and the Privacy Act of 1974 do not require that the names of individuals be provided.

SAMHSA proposes that individuals who received patient identifying information pursuant to the general designation on a consent form should be included on the List of Disclosures based on an entity affiliation, such as the name of their practice or place of employment. Patients who wish to know the name of the individual to whom their information was disclosed may ask the entity on the List of Disclosures to provide that information, however, 42 CFR part 2 would not require the entity to comply with a patient's request.

In order to allow time to develop, test, and implement advanced technology to more efficiently comply with this requirement, SAMHSA is proposing that the List of Disclosures requirement become effective two years after the effective date of the final rule. Some entities may be able to comply with this requirement without developing and implementing new technologies. In addition, entities that use and disclose primarily paper records could easily implement a system, if one does not already exist, such as a sign-out/sign-in log, that could be used to generate such a list. SAMHSA anticipates that there will be few requests based on the relatively small number of accounting requests that most covered entities have received to date under the HIPAA Accounting for Disclosures rule, according to some anecdotal reports.

SAMHSA is proposing that patient requests for a list of entities to which their information has been disclosed must be in writing and limited to disclosures made within the past two years. Consistent with the preamble discussion of terminology (§ 2.11, Definitions), ''written'' includes both paper and electronic documentation. A request letter addressed to the entity that disclosed the information might include language such as: ''I am writing to request a list of the entities to which my information has been disclosed within the past two years. This request is consistent with 42 CFR 2.13, which also includes the requirements for your response. Thank you for your assistance.''

In addition, SAMHSA is proposing that entities named on the consent form that disclose information to their participants under the general designation (entities without a treating provider relationship that serve as intermediaries) must respond to requests for a list of disclosures in 30 or fewer calendar days of receipt of the request. Responses sent to the patient electronically may be sent by encrypted transmission (*e.g.,* email), or by unencrypted email at the request of the patient, so long as the patient has been informed of the potential risks associated with unsecured transmission. Patients should be notified that there may be some level of risk that the information in an unencrypted email could be read by a third party. If patients are notified of the risks and still prefer unencrypted email, the patient has the right to receive the information in that way, and entities are not responsible for unauthorized access of the information while in transmission to the patient based on the patient's request.

Before using an unsecured method to respond to a request for a list of disclosures, an entity should take certain precautions, such as checking an email address for accuracy before sending it or sending an email alert to the patient for address confirmation to avoid unintended disclosures. Patients may also request that the entity communicate with them by an alternative means or at an alternative location. Responses sent by mail may be sent by United States Postal Service first class mail, an equivalent service, or a service with additional security features (*e.g.,* tracking). The response must include the name of the entity to which each disclosure was made, the date of the disclosure, and a brief description of the information disclosed. The brief description of the information disclosed must have sufficient specificity to be understandable to the patient. An example of a brief description of the information disclosed is a copy of the written request for disclosure. This requirement to provide a list of disclosures cannot be satisfied by providing patients with a list (or web address) of entities that potentially could receive their patient identifying information.

This proposed revision would facilitate patients' participation in advances in the health care delivery system by increasing their confidence that they could be informed, upon request, of who received their information pursuant to a general designation on the consent form.

In addition, confirming the identity of an individual who is not and has never been a patient while remaining silent on the identity of an actual patient could, by inference, compromise patient privacy. For example, if a reporter is inquiring about five individuals and only Mr. Smith is not and never has been a patient, by confirming that Mr. Smith is not and never has been a patient and remaining silent on the other four individuals, the part 2 program could enable the reporter to conclude that the other four individuals either are patients or have been patients. Therefore, SAMHSA is proposing to remove the concept from § 2.13(c)(2) that the regulations do not restrict a disclosure that an identified individual is not and never has been a patient. If confirming the identity of an individual who is not and never has been a patient, caution should be used so as not to make an inadvertent disclosure with respect to one or more other individuals. This proposed rule does not prohibit entities that receive a request for information about an individual from refusing to disclose any information regardless of whether the individual is or ever has been a patient(s).

E. Security for Records (§ 2.16)

1. Overview

Currently, the Security for Written Records section in § 2.16 addresses the maintenance, disclosure, access to, and

use of written records. This section, however, addresses paper, but not electronic records.

2. Proposed Revisions

SAMHSA is proposing to modernize this section to address both paper and, in light of the steady increase in the adoption of health IT, electronic records. Specifically, SAMHSA proposes to revise the heading by deleting the word ''written'' so that it now reads: Security for Records. SAMHSA also proposes to clarify that this section requires both part 2 programs and other lawful holders of patient identifying information to have in place formal policies and procedures for the security of both paper and electronic records. These formal policies and procedures are intended to ensure protection of patient identifying information when records are exchanged electronically using health IT as well as when they are exchanged using paper records. The formal policies and procedures must reasonably protect against unauthorized uses and disclosures of patient identifying information and protect against reasonably anticipated threats or hazards to the security of patient identifying information. The formal policies and procedures must address, among other things, the sanitization of hard copy and electronic media, which is addressed in the preamble discussion of Disposition of Records by Discontinued Programs (§ 2.19). Suggested resources for part 2 programs and other lawful holders developing formal policies and procedures include materials from the HHS Office for Civil Rights (*e.g., Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*), and the National Institute of Standards and Technology (NIST) (*e.g.,* the most current version of the *Special Publication 800–88, Guidelines for Media Sanitization*).

The proposed regulations provide further guidance for these policies and procedures. Finally, we are proposing to replace language in other sections of the proposed rule with a reference to the policies and procedures established under § 2.16, where applicable.

F. Disposition of Records by Discontinued Programs (§ 2.19)

1. Overview

As with § 2.16, the Disposition of Records by Discontinued Programs section in the current regulations do not address electronic records.

2. Proposed Revisions

SAMHSA proposes to modernize this section to address both paper and electronic records. Specifically, we propose to address the disposition of both paper and electronic records by discontinued programs, and add requirements for sanitizing paper and electronic media. By sanitizing paper or electronic media, we mean to render the data stored on the media non-retrievable. Sanitizing electronic media is distinctly different from deleting electronic records and may involve clearing (using software or hardware products to overwrite media with non-sensitive data) or purging (degaussing or exposing the media to a strong magnetic field in order to disrupt the recorded magnetic domains) the information from the electronic media. If circumstances warrant the destruction of the electronic media prior to disposal, destruction methods may include disintegrating, pulverizing, melting, incinerating, or shredding the media. Because failure to ensure total destruction of patient identifying information may lead to the unauthorized disclosure of sensitive information regarding a patient's substance use disorder history, SAMHSA expects the process of sanitizing paper (including printer and FAX ribbons, drums, etc.) or electronic media to be permanent and irreversible, so that there is no reasonable risk that the information may be recovered. This result is best achieved by sanitizing the paper or electronic media in a manner consistent with the most current version of the NIST Special Publication 800–88, *Guidelines for Media Sanitization.* SAMHSA also is proposing to reference the formal security policies and procedures for both paper and electronic records established under § 2.16.

G. Notice to Patients of Federal Confidentiality Requirements (§ 2.22)

1. Overview

Currently, § 2.22 lists the requirements of a notice to patients of the federal confidentiality requirements, including giving the patient a summary in writing of the federal law and regulations. As with other sections in the current regulations, this section requires that the notice to patients be in writing, but does not address electronic formats.

2. Proposed Revisions

SAMHSA proposes to continue to require that patients be given a summary in writing of the federal law and regulations. Consistent with the Preamble discussion in Terminology Changes in Section III.B.2.c., the term ''written'' includes both paper and electronic documentation. We, therefore, propose to permit the notice to patients to be either on paper or in an electronic format. SAMHSA also proposes to require the statement regarding the reporting of violations to include contact information for the appropriate authorities. The reporting of any violation of these regulations may be directed to the U.S. Attorney for the judicial district in which the violation occurs and the report of any violation of these regulations by an opioid treatment program may also be directed to the SAMHSA office responsible for opioid treatment program oversight (see § 2.4 of the proposed rule). SAMHSA is considering whether to issue guidance at a later date that includes a sample notice.

Although it is not a proposed requirement, SAMHSA encourages the part 2 program to be sensitive to the cultural composition of its patient population when considering whether the notice should also be provided in a language(s) other than English (*e.g.,* Spanish).

H. Consent Requirements (§ 2.31)

1. Overview

SAMHSA has heard a number of concerns from individuals regarding the current consent requirements of 42 CFR part 2. In particular, stakeholders expressed concern that the current requirements for sharing patient records covered by part 2 deter patients from participating in HIEs, ACOs, CCOs, and similar organizations. While technical solutions for managing consent collection, such as data segmentation, are possible, they are not widely incorporated into existing systems.

2. Proposed Revisions

SAMHSA examined the consent requirements in § 2.31 to explore options for facilitating the sharing of information within the health care context while ensuring the patient is fully informed and the necessary protections are in place. As a result, we propose several changes to this section. First, we propose to revise the section heading from ''Form of written consent'' to ''Consent requirements.'' SAMHSA also proposes to make revisions in three sections of the consent form requirements: The ''To Whom'' section, the ''Amount and Kind'' section, and the ''From Whom'' section. SAMHSA also is proposing to require a part 2 program or other lawful holder of patient identifying information to obtain written confirmation from the patient

that they understand both the terms of their consent and, when using a general designation in the ''To Whom'' section of the consent form (see Section III.H.2.a., To Whom, below), that they have the right to obtain, upon request, a list of entities to which their information has been disclosed pursuant to the general designation. In addition, SAMHSA is proposing to permit electronic signatures to the extent that they are not prohibited by any applicable law. SAMHSA is considering whether to issue guidance at a later date that includes a sample consent form.

As mentioned in Section III.C.2.a., New Definitions, SAMHSA is proposing to include a new definition of ''Treating provider relationship'' in § 2.11. Finally, as a result of these proposed revisions, we renumbered the subsections accordingly.

a. To Whom

i. Overview

Section 2.31(a)(2) of the current regulations requires that a consent form include the name or title of the individual or the name of the organization to which disclosure is to be made as part of the patient's written consent to the disclosure of their records regulated by 42 CFR part 2. The intent of the specificity required in the ''To Whom'' section was for the patient to be able to identify, at the point of consent, exactly who they are authorizing to receive their information.

Some stakeholders have reported that the requirement in 42 CFR 2.31(a)(2) for the name of the individual or organization that will be the recipient of the patient identifying information makes it difficult to include programs covered by the regulations in organizations that facilitate the exchange of health information or coordinate care (*e.g.,* HIEs, ACOs, and CCOs). These organizations have a large and growing number of participants and may not have consent management capabilities. Under the current regulations, if a new participant joins an HIE, ACO, CCO, or other similar entity after a consent is signed, and a patient later goes to that new participant for treatment, part 2 would require that the new participant obtain the patient's consent to receive the patient's information. Because of the reported burdens associated with the collection of updated consent forms whenever new participants join one of these organizations, some stakeholders have indicated that they are currently not including substance use disorder treatment information in their systems.

ii. Proposed Revisions

SAMHSA is proposing to move the current § 2.31(a)(2), ''To Whom,'' to § 2.31(a)(4). In the following discussion of the ''To Whom'' section of the consent form and in the regulatory text, SAMHSA makes a distinction between individuals and entities who have a treating provider relationship with the patient and those who do not. As discussed in § 2.11, SAMHSA proposes to define the term ''Treating provider relationship'' to provide that regardless of whether there has been an actual in-person encounter, (a) a patient agrees to be diagnosed, evaluated and/or treated for any condition by an individual or entity and (b) the individual or entity agrees to undertake diagnosis, evaluation and/or treatment of the patient, or consultation with the patient, for any condition.

Based on this definition, SAMHSA considers an entity to have a treating provider relationship with a patient if the entity employs or privileges one or more individuals who have a treating provider relationship with the patient.

SAMHSA is continuing to permit the name(s) of the individual(s) to whom a disclosure is to be made to be designated in the ''To Whom'' section of the consent form (*e.g.,* Jane Doe, MD; John Doe; or George Jones, JD). Because SAMHSA also is proposing to allow, in certain circumstances, a general designation, we propose to eliminate the current option of designating only a title of an individual (*e.g.,* Chief of Pediatrics at Lakeview County Hospital). SAMHSA also proposes to revise the requirements for designating the name of an entity, as discussed below.

In the case of an entity that has a treating provider relationship with the patient whose information is being disclosed, SAMHSA is proposing to permit the designation of the name of the entity without requiring any further designations (as is required for an entity that does not have a treating provider relationship with the patient whose information is being disclosed, see below). For example, the consent form could specify any of the following names of entities: Lakeview County Hospital, ABC Health Care Clinic, or Jane Doe & Associates Medical Practice.

In the case of an entity that does not have a treating provider relationship with the patient whose information is being disclosed and is a third-party payer that requires patient identifying information for the purpose of reimbursement for services rendered to the patient by the part 2 program, SAMHSA proposes to permit the designation of the name of the entity (*e.g.,* Medicare).

In the case of an entity that does not have a treating provider relationship with the patient whose information is being disclosed and is not covered by § 2.31(a)(4)(iii) (*i.e.,* the provision regarding third-party payers), SAMHSA proposes to permit the designation of the name(s) of the entity(-ies) and at least one of the following: (1) The name(s) of an individual participant(s); (2) the name(s) of an entity participant(s) that has a treating provider relationship with the patient whose information is being disclosed; or (3) a general designation of an individual or entity participant(s) or a class of participants that must be limited to those participants who have a treating provider relationship with the patient whose information is being disclosed. Examples of an entity without a treating provider relationship include an entity that facilitates the exchange of health information (*e.g.,* HIE) or a research institution. The consent form, therefore, could designate the HIE (an entity that does not have a treating provider relationship with the patient whose information is being disclosed) and Drs. Jones and Smith, and County Memorial Hospital (all participants in the HIE with a treating provider relationship with that same patient). Likewise, the consent form could designate the HIE (an entity that does not have a treating provider relationship with the patient whose information is being disclosed) and ''my treating providers'' (a general designation of an individual or entity) participant(s) or a class of individual and/or entity participants with a treating provider relationship with the patient whose information is being disclosed).

In the case of a research institution, a ''participant'' could be a clinical researcher with a treating provider relationship with the patient whose information is being disclosed, or a general researcher who does not have a treating provider relationship with the patient whose information is being disclosed. The clinical researcher could be included as ''my treating provider'' in a general designation on the consent form, whereas the general researcher would have to be named on the consent form. Alternatively, a research institution could obtain patient identifying information without consent if it meets the requirements in § 2.52.

If a general designation is used, the entity must have a mechanism in place to determine whether a treating provider relationship exists with the patient whose information is being disclosed.

We encourage innovative solutions to implement this provision. For example, the HIE in the aforementioned example could have a policy in place requiring their participating providers to attest to having a treating provider relationship with the patient. Likewise, the HIE could provide a patient portal that permits patients to designate treating providers as members of ''my health care team'' or ''my treating providers.''

Improving the quality of substance use disorder care depends on effective collaboration of mental health, substance use disorder, general health care, and other service providers in coordinating patient care. However, the composition of a health care team varies widely among entities. Because SAMHSA wants to ensure that patient identifying information is only disclosed to those individuals and entities on the health care team with a need to know this sensitive information, we are limiting a general designation to those individuals or entities with a treating provider relationship. Patients may further designate their treating providers as ''past,'' ''current,'' and/or ''future'' treating providers. In addition, a patient may designate, by name, one or more individuals on their health care team with whom they do not have a treating provider relationship.

SAMHSA proposes to balance the flexibility afforded by the general designation in the ''To Whom'' section by adding a new confidentiality safeguard: List of Disclosures (§ 2.13(d)). The List of Disclosures provision allows patients who have included a general designation in the ''To Whom'' section of their consent form to request and be provided a list of entities to which their information has been disclosed pursuant to the general designation. In addition, when using a general designation, a statement must be included on the consent form noting that, by signing the consent form, the patient confirms their understanding of the List of Disclosures provision.

Many new integrated care models rely on interoperable health IT and these proposed changes are expected to support the integration of substance use disorder treatment into primary and other specialty care, improving the patient experience, clinical outcomes, and patient safety while at the same time ensuring patient choice, confidentiality, and privacy.

The following table provides an overview of the options permitted when completing the designation in the ''To Whom'' section of the proposed consent form.

Designating Individuals and Organizations in the ''To Whom'' Section of the Consent Form

42 CFR 2.31	Individual or entity to whom disclosure is to be made	Treating provider relationship with patient whose information is being disclosed	Primary designation	Additional designation
(a)(4)(i)	Individual	Yes	Name of individual(s) (e.g., Jane Doe, MD).	None.
(a)(4)(i)	Individual	No	Name of individual(s) (e.g., John Doe)	None.
(a)(4)(ii)	Entity	Yes	Name of entity (e.g., Lakeview County Hospital).	None.
(a)(4)(iii)	Entity	No	Name of entity that is a third-party payer as specified under § 2.31(a)(4)(iii) (e.g., Medicare).	None.
(a)(4)(iv)	Entity	No	Name of entity that is not covered by § 2.31(a)(4)(iii) (e.g., HIE, or research institution).	At least one of the following: 1. The name(s) of an individual participant(s) (e.g. Jane Doe, MD, or John Doe). 2. The name(s) of an entity participant(s) with a treating provider relationship with the patient whose information is being disclosed (e.g., Lakeview County Hospital). 3. A general designation of an individual or entity participant(s) or a class of participants limited to those participants who have a treating provider relationship with the patient whose information is being disclosed (e.g., my current and future treating providers).

SAMHSA is seeking public comment on an alternative approach to the proposed required elements for the ''To Whom'' section of the consent form. The current part 2 required elements for the ''To Whom'' section of written consent are the name or title of the individual or the name of the organization to which the disclosure is to be made. The term ''organization'' is not defined in the current regulations, but SAMHSA has interpreted the term narrowly in guidance to mean that information can be sent to a lead organization but the information cannot flow from the lead organization to organization members or participants. Historically, that meant that all members or participants of an organization would need to be listed on the consent form and a new consent form would need to be obtained each time a new provider joined the organization.

SAMHSA's alternative approach reflects the same policy goal as the proposed regulation text (*i.e.,* allowing more flexibility in the ''To Whom'' section of the consent form) while attempting to simplify the language that would appear on the consent form. This alternative approach would not change the existing language in the ''To Whom'' section of the consent form.

Under this alternative approach, SAMHSA would add a definition of ''organization'' to § 2.11. Organization would mean, for purposes of § 2.31, (a) an organization that is a treating provider of the patient whose

information is being disclosed; or (b) an organization that is a third-party payer that requires patient identifying information for the purpose of reimbursement for services rendered to the patient by a part 2 program; or (c) an organization that is not a treating provider of the patient whose information is being disclosed but that serves as an intermediary in implementing the patient's consent by providing patient identifying information to its members or participants that have a treating provider relationship, as defined in § 2.11, or as otherwise specified by the patient.

Paragraph (a) of this definition relies on the definition of ''Treating provider relationship'' as defined in § 2.11. SAMHSA considers an organization to be a treating provider of a patient if the organization employs or privileges one or more individuals who have a treating provider relationship(s) with the ''patient.''

Paragraph (b) of this definition refers to an organization that is not a treating provider of the patient whose information is being disclosed but that requires patient identifying information in connection with its role as a third-party payer for the purpose of reimbursement for services rendered to the patient (*e.g.,* Medicare).

Paragraph (c) of this definition refers to an organization that is not a treating provider of the patient whose information is being disclosed but that serves as an intermediary in implementing the patient consent. It permits these organizations to further disclose patient identifying information to its members or participants that have a treating provider relationship with the patient. It also allows the patient to specify further instructions for re-disclosure to the organization's members or participants.

In all instances, patient identifying information should only be disclosed to those individuals and organizations in accordance with the purpose stated by the patient on the signed consent form and only to those individuals with a need to know this sensitive information.

SAMHSA is seeking public comment on the advantages and disadvantages of this alternative approach as compared to SAMHSA's proposed approach. If commenters believe the definition of ''organization'' in the alternative approach should be broader, please include proposals for alternate or additional required elements for the consent form that facilitate the sharing of information within the health care context while ensuring the patient is fully informed of the individuals and organizations that potentially could receive their patient identifying information and that the necessary protections are in place.

To consider this alternative approach, SAMHSA would require resolution of several issues. Therefore, SAMHSA is also seeking public comment on the following questions:

(1) To allow patients to determine which specific members or participants are authorized to receive their information from an organization that serves an intermediary in paragraph (c) of the proposed organization definition in SAMSHA's alternative approach, what additional elements would need to be required on the consent form?

(2) How would the List of Disclosures requirement be applied under a broad definition of organization? Should the requirement be applied only to paragraph (c) of the proposed organization definition in SAMHSA's alternative approach or should different safeguards replace or supplement the List of Disclosures requirement?

b. Amount and Kind

i. Overview

Section 2.31(a)(5) currently requires the consent to include how much and what kind of information is to be disclosed. Because we are proposing to allow the ''To Whom'' section of the consent form to include a general designation under certain circumstances, we want patients to be aware of the information they are authorizing to disclose when they sign the consent form.

ii. Proposed Revisions

SAMHSA is proposing to move the current § 2.31(a)(5), ''Amount and Kind,'' to § 2.31(a)(3) and revise the provision to require the consent form to explicitly describe the substance use disorder-related information to be disclosed. The types of information that might be requested include diagnostic information, medications and dosages, lab tests, allergies, substance use history summaries, trauma history summary, employment information, living situation and social supports, and claims/encounter data. The designation of the ''Amount and Kind'' of information to be disclosed must have sufficient specificity to allow the disclosing program or other entity to comply with the request. For example, the description may include: ''medications and dosages, including substance use disorder-related medications,'' or ''all of my substance use disorder-related claims/encounter data.'' Examples of unacceptable descriptions would be ''all of my records'' (does not address the substance use disorder-related information to be disclosed) and ''only my substance use disorder records my family knows about'' (lacks specificity).

c. From Whom

i. Overview

Section 2.31 currently requires the specific name or general designation of the program or person permitted to make the disclosure. In 1987, the requirement for the ''From Whom'' section of the consent form was broadened to the current requirement to permit a patient to consent to either a disclosure from a category of facilities or from a single specified program.

ii. Proposed Revisions

SAMHSA is proposing to move the current § 2.31(a)(1), ''From Whom,'' to § 2.31(a)(2). Because SAMHSA is now allowing, in certain instances, a general designation in the ''To Whom'' section of the consent form, we propose to require the ''From Whom'' section of the consent form to specifically name the part 2 program(s) or other lawful holder(s) of the patient identifying information permitted to make the disclosure. This revision would avoid any unintended consequences of including general designations in both the ''From Whom'' and ''To Whom'' sections. For example, the patient may be unaware of possible permutations of combining the two broad designations to which they are consenting, especially if these designations include future unnamed treating providers.

d. New Requirements

i. Overview

Currently, the consent requirements do not include any requirement that the patient confirms their understanding of the information on the consent form.

ii. Proposed Revisions

As discussed in the proposed revisions to the ''To Whom'' section, SAMHSA proposes to add two new requirements related to the patient's signing of the consent form. The first would require the part 2 program or other lawful holder of patient identifying information to include a statement on the consent form that the patient understands the terms of their consent. The second would require the part 2 program or other lawful holder of patient identifying information to include a statement on the consent form that the patient understands their right, pursuant to § 2.13(d), to request and be provided a list of entities to which their

information has been disclosed when the patient includes a general designation on the consent form. In addition, the part 2 program or other lawful holder of patient identifying information would have to include a statement on the consent form that the patient confirms their understanding of the terms of consent and § 2.13(d) by signing the consent form.

I. Prohibition on Re-disclosure (§ 2.32)

1. Overview

There is confusion on the part of some providers as to how much of a patient's record is subject to 42 CFR part 2, which often leads to a decision to protect the entire record.

2. Proposed Revisions

SAMHSA proposes to clarify that the prohibition on re-disclosure provision (§ 2.32) only applies to information that would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder, such as indicated through standard medical codes, descriptive language, or both, and allows other health-related information shared by the part 2 program to be re-disclosed, if permissible under the applicable law. For example, if an individual receives substance use disorder treatment from a part 2 program and also receives treatment for a health condition such as high blood pressure, the individual's record would include information unrelated to their substance use disorder (i.e., high blood pressure). Part 2 does not prohibit re-disclosure of the information related to the high blood pressure as long as it does not include information that would identify the individual as having or having had a substance use disorder.

However, illnesses that are brought about by drug or alcohol abuse may reveal that a patient has a substance use disorder. For example, cirrhosis of the liver or pancreatitis could reveal a substance use disorder. Also, if a prescription for a medication used for substance use disorder treatment is revealed without further clarification of a non-substance disorder use (e.g., methadone used for the treatment of cancer), it would suggest that the individual has a substance use disorder and also would be prohibited.

If data provenance (the historical record of the data and its origins) reveals information that would identify, directly or indirectly, and individual as having or having had a substance use disorder, the information would be prohibited from being re-disclosed. For example, if the treatment location is a substance use disorder treatment clinic, this information would identify an individual as having had a substance use disorder and is therefore prohibited.

SAMHSA also proposed to clarify that the federal rules restrict any use of the information to criminally investigate or prosecute any patient with a substance use disorder, except as provided in § 2.12(c)(5).

J. Disclosures To Prevent Multiple Enrollments (§ 2.34)

1. Overview

In the current regulations, special rules are included for disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs because these types of disclosure necessitate some adjustment of the basic written consent procedures in order to ensure maximum protection for patients. Under § 2.34, the timing, content, and use of the patient information is strictly limited in accordance with the purpose of the disclosure.

2. Proposed Revisions

SAMHSA proposes to modernize section § 2.34 by updating terminology and revising corresponding definitions. SAMHSA also proposes to consolidate definitions by moving definitions from this section to Definitions in § 2.11, as discussed in Section III.B., Definitions.

K. Medical Emergencies (§ 2.51)

1. Overview

SAMHSA is considering aligning the regulatory language with the statutory language regarding the medical emergency exception of 42 CFR part 2 (§ 2.51). The current regulations state that information may be disclosed without consent for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention. The statute, however, states that records may be disclosed ''to medical personnel to the extent necessary to meet a bona fide medical emergency.''

2. Proposed Revisions

SAMHSA proposes to adapt the medical emergency exception to give providers more discretion to determine when a ''bona fide medical emergency'' (42 U.S.C. 290dd–2(b)(2)(A)) exists. The proposed language states that patient identifying information may be disclosed to medical personnel to the extent necessary to meet a bona fide medical emergency, in which the patient's prior informed consent cannot be obtained.

SAMHSA proposes to continue to require the part 2 program to immediately document, in writing, specific information related to the medical emergency. Before a part 2 program enters into an affiliation with an HIE, it should consider whether the HIE has the capability to comply with all part 2 requirements, including the capacity to immediately notify the part 2 program when its records have been disclosed pursuant to a medical emergency. To promote compliance, SAMHSA recommends that the notification include all the information that the part 2 program is required to document in the patient's records (*e.g.,* date and time of disclosure, the nature of the emergency). Similarly, SAMHSA recommends that the part 2 program consider whether the HIE has the technology, rules, and procedures to appropriately protect patient identifying information.

L. Research (§ 2.52)

1. Overview

Under the current regulations at § 2.52, only the program director (part 2 program director) may authorize the disclosure of patient identifying information for scientific research purposes to qualified personnel. Part 2 data may be derived from a variety of sources, including federal or state agencies that administer Medicare, Medicaid, or Children's Health Insurance Program (CHIP), part 2 programs, or other individuals or entities that have lawfully obtained the information and may wish to facilitate a sharing of the information for purposes of scientific research that would ultimately benefit substance use disorder patients/beneficiaries.

Along with fifteen other federal departments and agencies, HHS has announced proposed revisions to the regulations for protection of human subjects in research (Common Rule). An NPRM was published in the **Federal Register** on September 8, 2015. In this part 2 NPRM, SAMHSA proposes certain revisions that are predicated on the current version of the Common Rule (45 CFR part 46, Protection of Human Subjects, promulgated in 1991). Although SAMHSA does not anticipate that the Common Rule provisions referenced in this part 2 NPRM will change substantially during the Common Rule rulemaking process, should conflicting policies be created, SAMHSA will take appropriate action (*e.g.,* issue an NPRM or technical correction).

2. Proposed Revisions

First, we propose to revise the section heading by deleting the word ''activities'' (§ 2.52, Research). SAMHSA also proposes to revise the research exception to permit data protected by 42 CFR part 2 to be disclosed to qualified personnel for the purpose of conducting scientific research by a part 2 program or any other individual or entity that is in lawful possession of part 2 data (lawful holder of part 2 data). For example, these lawful holders of part 2 data could include third-party payers, HIEs, ACOs, and CCOs. Qualified personnel are those individuals who meet the requirements specified in the Research provision to receive part 2 data for the purpose of conducting scientific research. SAMHSA examined the existing regulations that protect human subjects in research and concluded that, if those requirements were fulfilled, 42 CFR part 2 would ensure confidentiality protections consistent with the Congressional intent, while providing the expanded authority for disclosing patient identifying information.

Under 42 CFR part 2, part 2 programs or other lawful holders of part 2 data are permitted to disclose patient identifying information for research with patient consent, or without patient consent under limited circumstances. SAMHSA is proposing to allow patient identifying information to be disclosed for purposes of scientific research: (1) If the researcher is a HIPAA covered entity or business associate and provides documentation that the researcher obtained research participants' authorization, or a waiver of research participants' authorization by an Institutional Review Board (IRB) or privacy board, for use or disclosure of information about them for research purposes consistent with the HIPAA Privacy Rule, (45 CFR 164.512(i)); or (2) if the researcher is subject to just the HHS Common Rule (45 CFR part 46, subpart A) and provides documentation that the researcher is in compliance with the requirements of the HHS Common Rule, including requirements relating to informed consent or a waiver of consent (45 CFR 46.111 and 46.116); or (3) if the researcher is both a HIPAA covered entity or business associate and subject to the HHS Common Rule, the researcher has met the requirements of both (1) and (2).

IRBs that are designated by an institution under an assurance of compliance approved for Federalwide use (referred to as Federalwide Assurance, or FWA) by HHS Office for Human Research Protections (OHRP) under § 46.103(a) and that review research involving human subjects conducted or supported by HHS must be registered with HHS. The FWA is the assurance from an institution engaging in HHS-conducted or -supported human subjects research regarding compliance with 45 CFR part 46. An institution must have an FWA to receive HHS support for research involving human subjects, and the FWA has to designate an IRB registered with OHRP, whether it is an internal or external IRB.

A privacy board is a review body that may be established to act upon requests for a waiver or an alteration of the requirement under the HIPAA Privacy Rule to obtain an individual's authorization for uses and disclosures of protected health information for a particular research study. Like an IRB, a privacy board may waive or alter all or part of the HIPAA authorization requirements for a specified research project or protocol, provided certain conditions are met as provided in 45 CFR 164.512(i).

Currently, much research involving human subjects operates under the HHS Common Rule (45 CFR part 46, subpart A). These regulations, which apply to HHS-conducted or -supported research or to institutions that have voluntarily extended their FWA to apply to all research regardless of funding, include protections to help ensure confidentiality. Under this rule, IRBs determine that, when appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data before approving the research (45 CFR 46.111(a)(7)). IRBs can therefore address the requirements under the HIPAA Privacy Rule and the HHS Common Rule, which contain somewhat similar, but different sets of requirements. The proposed part 2 rules set out the requirements for a researcher conducting research with patient identifying information. Compliance with the HIPAA Privacy Rule and/or federal human subjects research protections, as set forth in the HHS Common Rule, where they apply, as well as the specific additional requirements in § 2.52(b) discussed below, is sufficient to meet the requirements for research disclosures under part 2.

SAMHSA also is proposing to address data linkages because the process of linking two or more streams of data opens up new research opportunities. For example, the practice of requesting data linkages from other data sources to study the longitudinal effects of treatment on patients is becoming widespread. SAMHSA is interested in affording patients protected by 42 CFR part 2 the same opportunity to benefit from these advanced research protocols while continuing to safeguard their privacy.

We propose to permit researchers to request to link data sets that include patient identifying information if: (1) The data linkage uses data from a federal data repository; and (2) the project, including a data protection plan, is reviewed and approved by an IRB registered with OHRP in accordance with 45 CFR part 46. This permissible disclosure would allow a researcher to disclose patient identifying information to a federal data repository and permit the federal data repository to link the patient identifying information to data held by that repository and return the linked data file back to the researcher. It would also ensure that patient privacy is considered, that the disclosure and use of identifiable data is justified, and that the research protocol includes an appropriate data protection plan. SAMHSA is proposing to limit the data repositories from which a researcher may request data for data linkages purposes to federal data repositories because federal agencies that maintain data repositories have policies and procedures in place to protect the security and confidentiality of the patient identifying information that must be submitted by a researcher in order to link the data sets. For example, in addition to meeting requirements under the HIPAA Rules and/or the HHS Common Rule, as applicable, requests for ''research identifiable files'' data from CMS require a Data Use Agreement and are reviewed by CMS's Privacy Board. CMS also has internal policies to protect the privacy and security of data received from the researcher, including the retention and destruction of that data. In addition, all federal agencies must comply with directives that protect sensitive data such as Office of Management and Budget Circular No. A–130, Appendix III—*Security of Federal Automated Information* and *NIST Federal Information Processing Standard 200* entitled *Minimum Security Requirements for Federal Information and Information Systems.*

SAMHSA is soliciting public input regarding whether to expand the data linkages provision beyond federal data repositories, what confidentiality, privacy, and security safeguards are in place for those non-federal data repositories, and whether those safeguards are sufficient to protect the security and confidentiality of the patient identifying information.

We invite stakeholders to provide input and recommendations on the specific policies, procedures, and other safeguards that non-federal data

repositories should have in place including, but not limited to:

1. Data use agreements (*e.g.,* a data use agreement or contract between the researcher and the data repository with written provisions to uphold security and confidentiality of the data and provide for sanctions or penalties for breaches of confidentiality);

2. A review by a privacy board or other regulatory body(-ies);

3. Internal security and privacy protections (both physical and electronic) for the confidentiality and security of data, including the retention and destruction of data received for data linkage purposes (*e.g.,* a requirement to destroy, in a manner to render the data non-retrievable, all patient identifying information provided by the researcher for data linkage purposes after performing the match).

4. Security and privacy protections (both physical and electronic) for receiving and linking data (*e.g.,* a requirement that transmission of data between the researcher and the data repository must occur through the use of secure methods and use the most current encryption technology, such as the most current version of the Advanced Encryption Standard (NIST Federal Information Processing Standards (FIPS 197)).

5. Internal confidentiality agreements for staff members who have access to patient identifying information and other confidential data;

6. Laws and regulations governing functions and operations, including those that address security and privacy;

7. Capability to perform data linkages according to recognized standards; and

8. Other relevant safeguards.

SAMHSA also is requesting public comment on the following three sets of questions:

First, should state government, local government, private, and/or other non-federal data repositories (please address separately) that meet the criteria above be permitted to conduct data linkages?

Second, are there additional or alternative criteria that should be included in the list above? Are there specific categories of data repositories that are already required to provide similar safeguards? When providing categories of data repositories, please describe the safeguards that are already in place for those entities.

Third, how could it be ensured that data repositories providing data linkages are in compliance with criteria or standards concerning confidentiality, privacy, and security safeguards? Are there any regulatory or oversight bodies (including non-governmental and governmental) that currently oversee compliance with criteria or standards concerning confidentiality, privacy, and security safeguards of data in non-federal repositories?

A researcher may report findings in aggregate form from patient information that has been rendered non-identifiable as long as there are assurances in place that the information cannot be re-identified and possibly serve as an unauthorized means to identify a patient, directly or indirectly, as having or having had a substance use disorder.

SAMHSA is proposing to require any individual or entity conducting scientific research using patient identifying information to meet additional requirements to ensure compliance with confidentiality provisions under part 2. Among these are a provision (§ 2.52(b)(1)) that requires researchers to be fully bound by these regulations and, if necessary, to resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations. This requirement means that researchers involved in a judicial proceeding are only required to disclose patient identifying information pursuant to a subpoena that is accompanied by a court order. In addition, we have included a provision (§ 2.52(b)(2)) prohibiting researchers from re-disclosing patient identifying information except back to the individual or entity from whom that patient identifying information was obtained or as permitted under § 2.52(b)(4), the data linkages provision. With respect to this re-disclosure provision, an individual or entity from whom the patient identifying information was obtained does not refer to patients.

Finally, SAMHSA is proposing to address, in addition to the maintenance of part 2 data, the retention and disposal of such information used in research. SAMHSA is proposing to do so by expanding the provisions in § 2.16, Security for Records and referencing the policies and procedures established under § 2.16 in this section.

These proposed revisions would allow additional scientific research to be conducted that would facilitate continual quality improvement of part 2 programs and the important services they offer. In doing so, SAMHSA proposes to incorporate existing protections for human subjects research that are widely accepted.

M. Audit and Evaluation (§ 2.53)

1. Overview

Under the current Medicare or Medicaid audit or evaluation section at § 2.53, an audit or evaluation is limited to a civil investigation or administrative remedy by any federal, state, or local agency responsible for oversight of the Medicare or Medicaid program. It also includes administrative enforcement, against the program by the agency, or any remedy authorized by law to be imposed as a result of the findings of the investigation.

2. Proposed Revisions

First, we propose to revise the section heading by deleting the word ''activities'' (§ 2.53, Audit and Evaluation). SAMHSA also proposes to modernize this section to include provisions for governing both paper and electronic patient records. In addition, we propose to revise the requirements for destroying patient identifying information by citing the expanded Security for Records section (§ 2.16). Furthermore, we propose to update the Medicare or Medicaid audit or evaluation subsection title to include CHIP and, in subsequent language, refer to Medicare, Medicaid and CHIP (SAMHSA has always applied this section to CHIP and is proposing to explicitly refer to it in the proposed regulation text).

SAMHSA proposes to permit the part 2 program, not just the part 2 program director, to determine who is qualified to conduct an audit or evaluation of the part 2 program in paragraph (a)(2). SAMHSA also proposes to permit an audit or evaluation necessary to meet the requirements of a CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE), under certain conditions. To ensure that patient identifying information is protected, the CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE) that is the subject of, or is conducting, the audit or evaluation must have a signed Participation Agreement with CMS which provides that the CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE) must comply with all applicable provisions of 42 U.S.C 290dd–2 and 42 CFR part 2.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. Currently, the information collection is approved under OMB Control No. 0930–0092. In

order to fairly evaluate whether changes to an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues: (a) Whether the information collection is necessary and useful to carry out the proper functions of the agency; (b) The accuracy of the agency's estimate of the information collection burden; (c) The quality, utility, and clarity of the information to be collected; and (d) Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under the PRA, the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section are to be considered in rule making. We explicitly seek, and will consider, public comment on our assumptions as they relate to the PRA requirements summarized in this section.

This proposed rule includes changes to information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements, as defined under the PRA (5 CFR part 1320). Some of the provisions involve changes from the information collections set out in the previous regulations. Information collection requirements are: (1) *Section 2.13(d)—Disclosure:* Requires entities named on a consent form that disclose patient identifying information to their participants under the general designation to make a disclosure, to each patient who requests a list of disclosures, in the form of a list of entities to which their information has been disclosed pursuant to the general designation, (2) *Section 2.22—Disclosure:* Requires each program to make public disclosure in the form of communication to each patient that federal law and regulations protect the confidentiality of each patient and includes a written summary of the effect of this law and these regulations, (3) *Section 2.51—Recordkeeping:* This provision requires the program to document a disclosure of a patient record to authorized medical personnel in a medical emergency. The regulation is silent on retention period for keeping these records as this will vary according to state laws. It is expected that these records will be kept as part of the patients' health records. Annual burden estimates for these requirements are summarized in the table below:

ANNUALIZED BURDEN ESTIMATES

	Annual number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Hourly wage cost	Total hour cost
Disclosures							
42 CFR 2.13 (d)	[1] 19,548	1	19,548	[2] 4.15	81,124	[3] $36.9175	$2,994,895
42 CFR 2.22	[4] 12,034	155	[5] 1,861,693	.20	372,338.6	[6] 40.26	14,990,352
Recordkeeping							
42 CFR 2.51	12,034	2	24,068	.167	4,019	[7] 34.16	137,289
Total	[8] 31,582	.....	1,905,309	.....	457,482	.....	18,122,536

[1] The number of entities required to generate a list of disclosures based on the number of estimated patient requests. Patient requests are based the total number of annual treatment admissions from SAMHSA's 2010–2012 Treatment Episode Data Set (TEDS) (see footnote 5). The estimated patient requests equal the average of the total number of requests for a 0.1% request rate and a 2% request rate.

[2] The estimated time for developing a list of disclosures is 4 hours for entities collecting the information electronically using an audit log and 3 hours for entities that produce such a list from paper records. Because 90% of entities are estimated to collect the information electronically using an audit log and 10% are estimated to use paper records, the average weighted time to develop a list of disclosures is 3.9 hours [(0.9 × 4 hours) + (0.1 × 3 hours)]. Including the estimated 15 minutes to prepare each list of disclosures for mailing or transmitting, the total estimated time for providing a patient a list of disclosures is 4.15 hours (3.9 hours + 0.25 hours).

[3] The weighted hourly rate for health information technicians, medical technicians and administrative staff who will be preparing the list of disclosures. The hourly rate is weighted to reflect the fact that health information and medical technicians, who will be generating the list of disclosures, have a higher wage rate than administrative staff and will contribute more hours to generating the list of disclosures. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* [accessed June 3, 2015], Standard Occupations Classification codes (29–2071, 31–9092) [*www.bls.gov/oes/*]. The hourly wage rate was multiplied by 2 to account for benefits and overhead costs.

[4] The number of publicly funded alcohol and drug facilities based on SAMHSA's 2013 National Survey of Substance Abuse Treatment Services (N–SSATS).

[5] The average number of annual treatment admissions from SAMHSA's 2010–2012 Treatment Episode Data Set (TEDS).

[6] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* [accessed July 16, 2015], Standard Occupations Classification code (21–1011) [*www.bls.gov/oes/*]. The hourly wage rate was multiplied by 2 to account for benefits and overhead costs.

[7] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* [accessed July 16, 2015], Standard Occupations Classification code (43–0000) [*www.bls.gov/oes/*]. The hourly wage rate was multiplied by 2 to account for benefits and overhead costs.

[8] The combined total of the number of publicly funded alcohol and drug facilities and the number of entities required to generate a list of disclosures.

As described in greater detail in Section VI., Regulatory Impact Analysis, the respondents for the collection of information under 42 CFR 2.22 and 2.51 are publicly (federal, state, or local) funded, assisted, or regulated substance use disorder treatment programs. The estimate of the number of such programs (respondents) is based on the results of the 2013 N–SSATS, and the average number of annual total responses is based on 2010–2012 information on patient admissions reported to the Treatment Episode Data Set (TEDS), approved under OMB Control No. 0930–0106 and OMB Control No. 0930–0335.

The respondents for the collection of information under 42 CFR 2.13(d) are entities named on the consent form that disclose information to their participants pursuant to the general designation. These entities primarily would be organizations that facilitate the exchange of health information (*e.g.,* HIEs) or coordinate care (*e.g.,* ACOs, CCOs, and patient-centered medical homes (sometimes called health homes)), but other organizations, such as research institutions, also may disclose patient identifying information to their participants (*e.g.,* clinical researchers) pursuant to the general

designation on the consent form. Because there are no definitive data sources for this potential range of organizations, we are not associating requests for a list of disclosures with any particular type of organization. Consequently, the number of organizations that must respond to list of disclosures requests is based on the total number of requests each year.

V. Response to Comments

Because of the large number of public comments, we anticipate receiving on this **Federal Register** document, we are not going to be able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

This proposed rule is necessary to modernize the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR part 2. The last substantive update to 42 CFR part 2 was in 1987. The part 2 laws were written out of great concern about the potential use of substance use disorder treatment information causing individuals with substance use disorders from seeking needed treatment. Over the last 25 years, significant changes have occurred within the U.S. health care system that were not envisioned by the current regulations, including new models of integrated care that are built on a foundation of information sharing to support coordination of patient care, the development of an electronic infrastructure for managing and exchanging patient data, and a new focus on performance measurement within the health care system. The goal of this proposed rule is to update 42 CFR part 2, and clarify the requirements associated with information exchange in these new health care models.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

When estimating the total costs associated with changes to the 42 CFR part 2 regulations, we assumed five sets of costs: updates to health IT systems costs, costs for staff training and updates to training curriculum, costs to update patient consent forms, costs associated with providing patients a list of entities to which their information has been disclosed pursuant to a general designation on the consent form (*i.e.,* the List of Disclosures requirement), and implementation costs associated with the List of Disclosure requirements. We assumed that costs associated with modifications to existing health IT systems, staff training costs associated with updating staff training materials, and costs to update consent forms would be one-time costs the first year the final rule is in effect and would not carry forward into future years. Staff training costs other than those associated with updating training materials are assumed to be ongoing annual costs to part 2 programs, also beginning in the first year that the final rule is in effect. The List of Disclosures costs are assumed to be ongoing annual costs to entities named on a consent form that disclose patient identifying information to their participants under the general designation. The List of Disclosures requirement, however, does not go into effect until two years after the final rule is in effect. Therefore, in years 1 and 2, the costs associated with the List of Disclosures provision are limited to implementation costs for entities that chose to upgrade their health IT systems in order to comply with the List of Disclosure requirements.

We estimate, therefore, that in the first year that the final rule is in effect, the costs associated with updates to 42 CFR part 2 would be $74,217,979. In year two, we estimate that costs would be $47,021,182. In years 3 through 10, we estimate the annual costs would be $14,835,444. Over the 10-year period of 2015–2024, the total undiscounted cost of the proposed changes would be $239,922,716 in 2015 dollars. When future costs are discounted at 3 percent or 7 percent per year, the total costs become approximately $220.9 million or $200.9 million, respectively. These costs are presented in the tables below.

TOTAL COST OF 42 CFR PART 2 REVISIONS

[2015 dollars]

Year	Staff training costs (A)	Consent form updates (B)	List of disclosures (C)	Health IT costs (D)	Total costs (E)
2015	$14,881,443	$204,786	$10,995,750	$48,136,000	$74,217,979
2016	11,834,782	0	35,186,400	0	47,021,182
2017	11,834,782	0	3,000,662	0	14,835,444

TOTAL COST OF 42 CFR PART 2 REVISIONS—Continued

[2015 dollars]

Year	Staff training costs (A)	Consent form updates (B)	List of disclosures (C)	Health IT costs (D)	Total costs (E)
2018	11,834,782	0	3,000,662	0	14,835,444
2019	11,834,782	0	3,000,662	0	14,835,444
2020	11,834,782	0	3,000,662	0	14,835,444
2021	11,834,782	0	3,000,662	0	14,835,444
2022	11,834,782	0	3,000,662	0	14,835,444
2023	11,834,782	0	3,000,662	0	14,835,444
2024	11,834,782	0	3,000,662	0	14,835,444
Total	121,394,485	204,786	70,187,445	48,136,000	239,922,716

TOTAL COST OF 42 CFR PART 2 REVISIONS—ANNUAL DISCOUNTING

[2015 dollars]

Year	Total costs (E)	Total with 3% annual discounting (F)	Total with 7% annual discounting (G)
2015	$74,217,979	$74,217,979	$74,217,979
2016	47,021,182	45,651,633	43,945,030
2017	14,835,444	13,983,829	12,957,852
2018	14,835,444	13,576,533	12,110,142
2019	14,835,444	13,181,100	11,317,889
2020	14,835,444	12,797,185	10,577,467
2021	14,835,444	12,424,451	9,885,483
2022	14,835,444	12,062,574	9,238,769
2023	14,835,444	11,711,237	8,634,364
2024	14,835,444	11,370,133	8,069,499
Total	239,922,716	220,976,654	200,954,473

The costs associated with the proposed revisions stem from staff training and updates to training curriculum, updates to patient consent forms, compliance with the List of Disclosures requirement (including implementation costs), and updates to health IT infrastructure for information exchange. Based on data from the 2013 N–SSATS, we estimate that 12,034 hospitals, outpatient treatment centers, and residential treatment facilities are covered by part 2. N–SSATS is an annual survey of U.S. substance abuse treatment facilities. Data is collected on facility location, characteristics, and service utilization. Not all treatment providers included in N–SSATs are believed to be under the jurisdiction of the part 2 regulations. The 12,034 number is a subset of the 14,148 substance abuse treatment facilities that responded to the 2013 N–SSATS, and includes all federally operated facilities, facilities that reported receiving public funding other than Medicare and Medicaid, facilities that reported accepting Medicare, Medicaid, TRICARE, and/or ATR voucher payments, or were SAMHSA-certified Opioid Treatment Programs. If a facility did not have at least one of these conditions, it was interpreted not to have received any federal funding and, therefore, not included in the estimate.

If an independently practicing clinician does not meet the requirements of paragraph (1) of the definition of Program (an individual or entity (other than a general medical facility or general medical practice) who holds itself out as providing and provides substance use disorder diagnosis, treatment or referral for treatment), they may be subject to 42 CFR part 2 if they constitute an identified unit within a general medical facility or general medical practice which holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment or if their primary function in the facility or practice is the provision of such services and they are identified as providing such services. Due to data limitations, it was not possible to estimate the costs for independently practicing providers covered by part 2 that did not participate in the 2013 N–SSATS. For example, data from ABAM provides the number of physicians since 2000 who have active ABAM certification. However, there is no source for the number of physicians who have not participated in the ABAM certification process. In addition, it is not possible to determine which ABAM-certified physicians practice in a general medical setting rather than in a specialty treatment facility that was already counted in the N–SSATS data.

Several provisions in the draft NPRM reference ''other lawful holders of patient identifying information'' in combination with part 2 programs. These other lawful holders must comply with part 2 requirements with respect to information they maintain that is covered by part 2 regulations. However, because this group could encompass a wide range of organizations, depending on whether they received part 2 data via patient consent or as a result of one of the limited exceptions to the consent requirement specified in the regulations, we are unable to include estimates regarding the number and type of these organizations and are only including part 2 programs in this analysis.

In addition to the part 2 programs described above, entities named on a consent form that disclose patient identifying information to their participants under the general designation must provide patients, upon request, a list of entities to which their information has been disclosed pursuant to a general designation. These entities primarily would include organizations that facilitate the exchange of health information (*e.g.*, HIEs), and may also include organizations responsible for care coordination (*e.g.*, ACOs, CCOs, and patient-centered medical homes (sometimes called health homes)). The most recent estimates of these types of entities are 67 functional, publicly funded HIEs and 161 functional, privately funded HIEs in 2013.[1] As of January 2015, there were an estimated 744 ACOs covering approximately 23.5 million individuals.[2] Finally, in 2014, the Accreditation Association for Ambulatory Health Care, Inc., reported that 7,000 medical practices have been accredited as patient-centered medical homes.[3] While these types of organizations were the primary focus of this provision on the consent form, other types of entities, such as research institutions, may also disclose patient identifying information to their participants (*e.g.*, clinical researchers) pursuant to the general designation on the consent form. Because there are no definitive data sources for this potential range of organizations, we are not associating requests for lists of disclosures with any particular type of organization. We, instead, chose to estimate the number of organizations that must respond to list of disclosures requests based on the total number of requests each year.

1. Direct Costs of Implementing the Proposed Regulations

There is no known baseline estimate of the current costs associated with 42 CFR part 2 compliance. Instead, SAMHSA estimated these cost based on a range of published costs associated with HIPAA implementation and compliance.[4] [5]

a. Staff Training

A Standard HIPAA training that meets or exceeds the federal training requirements is, on average, one hour long.[6] Therefore, we also estimated one hour of training per staff to achieve proficiency in the 42 CFR part 2 regulations. To estimate the labor costs associated with staff training, we averaged the average hourly costs for counseling staff in specialty treatment centers ($19.48 [7]), hospital treatment centers ($21.47 [8]), and solo practice offices ($22.61 [9]). The resulting blended rate was $21.19 per hour. In order to account for benefits and overhead costs associated with staff time, we multiplied the blended hourly rate by two. These estimates are only for training costs associated with counseling staff, who we assume will have primary responsibility for executing the functions associated with the NPRM revisions.

With regard to training materials, most part 2 programs are assumed to already have training curricula in place that covers current 42 CFR part 2 regulations, and, therefore, these facilities would only need to update existing training materials rather than develop new materials. The American Hospital Association estimated that the costs for the development of Privacy and Confidentiality training, which would include the development of training materials and instructor labor costs, was $16 per employee training hour in 2000.[10] Because we assumed that part 2 programs would be updating rather than developing training materials, we estimated the cost of training development to be one-half of the cost of developing new materials, or $8 per employee. Adjusted for inflation,[11] training development costs in 2015 would be $10.91 per employee.

Using SAMHSA's 2010–2012 TEDS average annual number of treatment admissions (n=1,861,693) as an estimate of the annual number of patients at part 2 programs and calculated staffing numbers based on a range of counseling staff-to-client ratios (*i.e.*, 1 to 10 [12] and 1 to 5 [13]). Based on these assumptions, staff training costs associated with part 2 patient consent procedures were projected to range from $9.9 million to $19.8 million in 2015. We averaged the two estimated costs for staff training to determine the final overall estimate of $14,881,443. We assumed the costs associated with updating training materials will be a one-time cost. Therefore, in subsequent years, we assumed the costs associated with staff training will be a function of the blended hourly rate (multiplied by two to account for benefits and overhead costs) and the estimated number of staff (developed based on the same two staff-to-client ratios described above multiplied by estimated patient counts). Staff training costs associated with part 2 revisions are projected to range from $7.9 million to $15.8 million after 2015. We averaged the two estimated costs for staff training to determine the final overall estimate of $11,834,782.

b. Updates to Consent Forms

Updates to the 42 CFR part 2 regulations will need to be reflected in patient consent forms. Results from a 2008 study from the Mayo Clinic Health Care Systems [14] reported actuarial costs for HIPAA implementation activities. The reported cost to update

[1] *Trends in Health Information Exchanges* (Trends in Health Information Exchanges) *https://innovations.ahrq.gov/perspectives/trends-health-information-exchanges#3.*

[2] Muhlestein, D. (2015). Growth and Dispersion of Accountable Care Organizations in 2015. *Health Affairs Blog, 19.*

[3] Accreditation Association for Ambulatory Health Care. ''The Medical Home—Avoiding the Rush to Judgment, Growing Model is a Transformative Process Requiring Perseverance, Patience . . . and Time, Body of Evidence Illustrating Success is Surging'' White Paper.

[4] Kilbridge, P. (2003). The cost of HIPAA compliance. *New England Journal of Medicine*, 348(15), 1423–1477.

[5] Williams, A.R., Herman, D.C., Moriarty, J.P., Beebe, T.J., Bruggeman, S.K., Klavetter, E.W. & Bartz, J.K. (2008). HIPAA costs and patient perceptions of privacy safeguards at Mayo Clinic. *Joint Commission Journal on Quality and Patient Safety, 34*(1), 27–35.

[6] 65 FR 82462, 82770 (Dec. 28, 2000) (Standards for Privacy of Individually Identifiable Health Information).

[7] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics*, [accessed May 2, 2015] Outpatient Mental Health and Substance Abuse Centers (NAICS code 621420), Standard Occupations Classification code (211011) [*www.bls.gov/oes/*].

[8] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics*, [accessed May 2, 2014] Psychiatric and Substance Abuse Hospitals (NAICS code 622200), Standard Occupations Classification code (211011) [*www.bls.gov/oes/*].

[9] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics*, [accessed September 23, 2014] Offices of Mental Health Practitioners (except Physicians) (NAICS code 621330), Standard Occupations Classification code (211011) [*www.bls.gov/oes/*].

[10] These estimates are not HHS estimates nor are they HHS-endorsed cost estimates of HIPAA implementation and compliance.

[11] Calculated using the Consumer Price Index.

[12] North Carolina NC Administrative Code [accessed September 23, 2014]. [*http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2013%20-%20nc%20medical%20care%20commission/subchapter%20b/10a%20ncac%2013b%20.5203.pdf.*]

[13] Commonwealth of Pennsylvania—Department of Health Staffing Requirements for Drug and Alcohol Treatment Activities [accessed September 23, 2014]. [*http://www.pacode.com/secure/data/028/chapter704/s704.12.html.*]

[14] Williams, A.R., Herman, D.C., Moriarty, J.P., Beebe, T.J., Bruggeman, S.K., Klavetter, E.W. & Bartz, J.K. (2008). HIPAA costs and patient perceptions of privacy safeguards at Mayo Clinic. *Joint Commission Journal on Quality and Patient Safety, 34*(1), 27–35.

authorization forms was $0.10 per patient. Adjusted for inflation, costs associated with updating the patient consent forms in 2015 would be $0.11 per patient. We used the average number of substance abuse treatment admissions from SAMHSA's 2010–2012 TEDS as our estimate of the number of clients treated on an annual basis by part 2 facilities. The total cost burden associated with updating the consent forms to reflect to the updated 42 CFR part 2 regulations would be $204,786 (1,861,693 * $0.11).

c. List of Disclosures Costs

The updated part 2 regulations allow patients who have consented to disclose their identifying information using a general designation to request a list of entities to which their information has been disclosed pursuant to the general designation. Under this proposed rule, entities named on a consent form that disclose patient identifying information to their participants under the general designation would be required to provide a list of disclosures after receiving a patient request. Under the List of Disclosure requirements, a patient could make a request, for example, to an organization that facilitates the exchange of health information (*e.g.*, an HIE) or an organization responsible for coordinating care (*e.g.*, an ACO) for a list of disclosures that would include the name of the entity to whom each disclosure was made, the date of the disclosure, and a brief description of the patient identifying information disclosed, and include this information for all entities to whom the patient identifying information has been disclosed pursuant to the general designation in the past two years.

For purposes of this analysis, we assumed that entities disclosing patient identifying information to their participants pursuant to a patient's general designation on a consent form are already collecting the information necessary to comply with the List of Disclosure requirement, in some form, either electronically or using paper records. We also assumed that these entities could comply with the List of Disclosures requirement by either collecting this information electronically by using audit logs to obtain the required information or by keeping a paper record. However, to address possible concerns about technical feasibility and other implementation issues, SAMHSA is proposing that the List of Disclosures requirement become effective two years after the effective date of the final rule to allow entities collecting this information time to review their operations and business processes and to decide whether technological solutions are needed to enable them to more efficiently comply with the requirement.

In order to make preliminary estimates of the implementation costs, we first estimated the number of potentially impacted entities based on the anticipated number of patient requests for a disclosure report in a calendar year. We used the average number of substance abuse treatment admissions from SAMHSA's 2010–2012 TEDS (n = 1,861,693) as the number of patients treated annually by part 2 programs. We then used the average of a 0.1 and 2 percent patient request rate as our estimate of the number of impacted entities (n = 19,548).

From there, we assumed ten percent of the impacted entities would use paper records to comply with the disclosure reporting requirements (n = 1,995) and would have minimal implementation costs in years 1 and 2. Among the remaining entities, many may be able to comply with the disclosure reporting requirements without developing or implementing new technologies. For entities that do choose to either update their existing capabilities or develop and implement new technologies to facilitate compliance, we assumed two sets of costs: (1) Planning and policy development costs in year 1 and (2) system update costs in year 2.

Absent any data on the number of facilities that would require new technology or the type of technology to be implemented, we assumed that twenty-five percent (n = 4,398) of the remaining entities would choose to upgrade their existing health IT systems. The actual system upgrade costs will vary considerably based on the type of upgrades that are required. Some entities may only require minor system updates to streamline the reporting requirements, while others may choose to implement an entirely new system. Given these data limitations, we assumed an average, per-entity cost, of $2,500 for planning development costs in year 1 and an average, per-entity cost, of $8,000 for system upgrades in year 2. The implementation costs for List of Disclosure reporting compliance across are estimated to be $10,995,750 in year 1 (4,398 * $2,500) and $35,186,400 (4,398 * $8,000) in year 2.

Once the disclosure reporting requirements go into effect, we assumed that the majority of the costs associated with the List of Disclosures requirement would primarily come from staff time needed to prepare a list of disclosures upon a patient's request. We also assumed that the information would need to be converted to a format that is accessible to patients.

For those entities with a health IT system, we expected that disclosure information would be available in the system's audit log. We also assumed that, unless the audit log has some sort of electronic filtering system, it would contain information above and beyond the requirements for complying with a request for a list of disclosures. We have also assumed that the staff accessing and filtering an audit log to compile the information for lists of disclosures would be health information technicians. The average hourly rate for health information technicians is $18.68 an hour.[15] In order to account for benefits and overhead costs associated with staff time, we multiplied the hourly wage rate by two. Absent any existing information on the amount of time associated with producing a list of disclosures from an audit log, we assumed it would take a health information technician half a day (or four hours) on average, to produce the list from an audit log.

For entities using paper records to track disclosures, we expected that a staff member would need to gather and aggregate the requested list of disclosures from paper records. We assumed medical record technicians would be the staff with the primary responsibility for compiling the information for a list of disclosures. The average hourly rate for medical record technicians is $18.68 an hour.[16] In order to account for benefits and overhead costs associated with staff time, we multiplied the hourly wage rate by two. Absent any existing information on the amount of time associated with producing a list of disclosures from paper records, we assumed it would take a medical record technician three hours, on average, to produce the list from paper records.[17]

[15] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics,* [accessed June 3, 2015], Standard Occupations Classification code (29–2071) [*www.bls.gov/oes/*].

[16] IBID.

[17] For facilities that maintain paper records, consent forms would indicate who has been given access to the record. By contrast, our understanding of health IT audit logs is that they include a record of all instances in which a record has been accessed. The audit log will include a record of who accessed the system, the date the record was accessed, and what operations were performed. The audit logs, therefore, will include considerably more data than what we would anticipate finding in paper records. Unless the audit log has an electronic filtering system, we are assuming that a health information technician will need to manually review all records in an audit log in order to compile the necessary information for a list of disclosures.

The number of requests for a list of disclosures will determine the overall burden associated with the List of Disclosures reporting requirements. However, because this is a new requirement, there were no data on which to base an estimated number of requests per year. We expect that the rate of requests will be relatively low. We therefore calculated the total costs for two rates, 0.1 percent and 2 percent of patients per year.

We used the average number of substance abuse treatment admissions from SAMHSA's 2010–2012 TEDS as the number of patients treated annually by part 2 programs. Assuming that 10 percent of patients making requests (n = 186.17 to n = 3,723.39) would request a list of disclosures from entities that track disclosures through paper records and 90 percent of patients making requests (n = 1,675.52 to n = 33,510.47) would make such a request of entities that track disclosures through health IT audit logs, the estimated costs to develop lists of disclosures range from $20,865.86 to $417,317.10 for entities using paper records, and $250,390.26 to $5,007,805.23 for entities using audit logs. (These ranges reflect the costs based on the two estimated patient rates of request referenced above (*i.e.*, 0.1 percent and 2 percent of patients per year)).

Once a list of disclosures has been produced, it can be returned to the patient either by email or mail. Since the method of sending the list of disclosures depends on patient preference, we assumed that 50 percent of the lists of disclosures would be sent by email and 50 percent by first-class mail. We assumed that mailing and supply costs related to list of disclosures notifications were $0.10 supply cost per notification and $0.49 postage cost per mailing. We also estimated that it would take an administrative staff member 15 minutes to prepare each list of disclosures for mailing and/or transmitting, and that staff preparing the letters earn $15.01 [18] per hour. In order to account for benefits and overhead costs associated with staff time, we multiplied the hourly wage rate by two. The estimated costs for list of disclosures notifications range from $7,535.20 to $150,704.05 for notifications sent by first-class mail, and $6,986 to $139,720.06 for notifications sent by email.

To produce the final overall cost estimate, we took the average of the minimum and maximum estimated costs to develop lists of disclosures by entities collecting the information electronically by using an audit log, and the average of the minimum and maximum estimated costs to develop lists of disclosures by entities using paper records. We then added the averages together to produce our estimate of the total cost to entities to develop lists of disclosures. Next we took the average of the minimum and maximum estimated costs for list of disclosures notifications sent via email and the minimum and maximum estimated costs for such notifications sent via first-class mail. We then added these two averages together to produce our estimate of the total cost to entities for list of disclosures notifications. Finally, the development and notification costs for these lists of disclosures were added together for the final estimate of costs associated with complying with List of Disclosure reporting requirements. The total cost for List of Disclosure reporting compliance across all entities was $3,000,661.88 in 2015 dollars. Complying with List of Disclosure requirements is assumed to be an ongoing, annual activity. Across the ten-year period, the total costs associated with the List of Disclosure reporting includes $10,995,750 in year 1, $35,186,400 in year 2, and $3,000,662 annually in years 3–10 for a total cost of $70,187,445 across the ten-year period.

TOTAL DISCLOSURE REPORTING COSTS IN 2015

	Minimum estimated cost	Maximum estimated cost	Average estimated cost
Facilities with a Health IT System	$250,390	$5,007,805	$2,629,098
Facilities without a Health IT System	20,865	417,317	219,091
Total Costs			2,848,189
Average Number of Facilities			19,548

TOTAL DISCLOSURE NOTIFICATION COSTS IN 2015

	Minimum estimated cost	Maximum estimated cost	Average estimated cost
Email Notification	$6,986	$139,720	$73,353
First Class Mail Notification	7,535	150,704	79,120
Total Costs			152,473

d. IT Updates

SAMHSA, in collaboration with ONC and Federal and community stakeholders, has developed Consent2Share which is an open source tool for consent management and data segmentation that is designed to integrate with existing EHR and HIE systems. The Consent2Share architecture has a front-end, patient facing system known as Patient Consent Management and a backend control system known as Access Control Services. Communications with EHR vendors indicate that the cost to facilities of purchasing and installing additional functionality to existing electronic medical records applications, such as Consent2Share, typically range from $2,500 to $5,000. Because the add-on systems for part 2 programs may be more complex than standard patient monitoring systems, we estimate that the cost of adding the new functionality would be approximately $8,000 per facility. We also assumed that this

[18] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics*, [accessed June 3, 2015], Standard Occupations Classification code (31–9092) [*www.bls.gov/oes/*].

would be a one-time expense, rather than a recurring cost, for each provider.

Furthermore, national estimates indicated that no more than 50 percent of substance use disorder treatment facilities have an operational ''computerized administrative information system.'' [19] We, therefore, estimated that only half of the 12,034 part 2 programs (*i.e.*, 6,017 facilities) would have operational health IT systems that would require modifications to account for the changes to 42 CFR part 2. With 6,017 part 2 programs with operational information systems, we estimated that each facility would need to spend $8,000 to modify their health IT system, which would lead to a total burden for updating health IT systems of $48,136,000. Updating health IT systems would be a one-time cost, and maintenance costs should be part of general health IT maintenance costs in later years. The proposed rules do not require that part 2 programs adopt health IT systems so there are no health IT costs associated with the estimated 50 percent of substance use disorder treatment facilities that continue to use paper records.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. While the changes in the regulations would apply to all part 2 programs, the impact on these entities would be quite small. Specifically, as described in the Overall Impact section, the cost to part 2 programs associated with updates to 42 CFR part 2 in the first year that the final rule is in effect would be $74,217,979, a figure that, due to a number of one-time updates, is the highest for any of the 10 years estimated. The per-entity economic impact in the first year would be approximately $6,167 ($74,217,979 ÷ 12,034), a figure that is unlikely to represent 3% of revenues for 5% of impacted small entities. Consequently, it has been determined that the proposed regulations would not have a significant economic impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule would have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this rule does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

SAMHSA is proposing to modernize 42 CFR part 2. With respect to our proposal to revise the regulations, we do not believe that this proposal would have a significant impact as it gives more flexibility to individuals and entities covered by 42 CFR part 2 but also adds privacy protections within the consent requirements for the patient. We are making this proposal in response to concerns that 42 CFR part 2 is outdated and burdensome.

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it would not have substantial direct effects on the rights, roles, and responsibilities of states, local or tribal governments.

C. Conclusion

SAMHSA is proposing to modernize 42 CFR part 2. With respect to our proposal to revise the regulations, we do not believe that this proposal would have a significant impact as it gives more flexibility to individuals and entities covered by 42 CFR part 2 but also increases privacy protections within the consent requirements and adds an additional confidentiality safeguard for patients. This proposed rule does not reach the economic threshold for requiring a regulatory impact by Executive Orders 12866 and 13563 and thus is not considered a major rule. Likewise, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. We are not preparing an analysis for section 1102(b) of the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals. This proposed rule would have no consequential effect on state, local, or tribal governments or on the private sector. Since this rule does not impose any costs on state or local governments, the requirements of Executive Order 13132 on federalism are not applicable.

We invite public comments on this section and request any additional data that would help us determine more accurately the impact on individuals and entities by the proposed rule. In accordance with the provisions of Executive Order 12866, this rule was reviewed by the OMB.

List of Subjects in 42 CFR Part 2

Alcohol abuse, Alcoholism, Drug abuse, Grant programs-health, Health records, Privacy, Reporting, and Recordkeeping requirements.

Regulations Text

For the reasons stated in the preamble of this proposed rule, 42 CFR part 2 is proposed to be revised as follows:

[19] McLellan, AT, Kathleen Meyers, K, Contemporary addiction treatment: A review of systems problems for adults and adolescents, Biological Psychiatry, Volume 56, Issue 10, 15 November 2004, Pages 764–770, ISSN 0006–3223, *http://dx.doi.org/10.1016/j.biopsych.2004.06.018.*

PART 2—CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

Subpart A—Introduction

Subpart B—General Provisions

Subpart C—Disclosures with Patient Consent

Subpart D—Disclosures without Patient Consent

Subpart E—Court Orders Authorizing Disclosure and Use

Authority: 42 U.S.C. 290dd–2.

Subpart A—Introduction

§ 2.1 Statutory authority for confidentiality of substance use disorder patient records.

Title 42, United States Code, Section 290dd–2(g) authorizes the Secretary to prescribe regulations. Such regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this statute, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

§ 2.2 Purpose and effect.

(a) *Purpose.* Under the statutory provisions quoted in § 2.1, these regulations impose restrictions upon the disclosure and use of substance abuse patient records which are maintained in connection with the performance of any part 2 program. The regulations specify in:

(1) Subpart B of this part: General Provisions, including definitions, applicability, and general restrictions;

(2) Subpart C of this part: Disclosures with Patient Consent, including disclosures which require patient consent and the consent form requirements;

(3) Subpart D of this part: Disclosures without Patient Consent, including disclosures which do not require patient consent or an authorizing court order; and

(4) Subpart E of this part: Court Orders Authorizing Disclosure and Use, including disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders.

(b) *Effect.* (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstance exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.

(2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to ensure that a patient receiving treatment for a substance use disorder in a part 2 program is not made more vulnerable by reason of the availability of their patient record than an individual with a substance use disorder who does not seek treatment.

(3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290dd–2(f) and § 2.3) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers* v. *United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

§ 2.3 Criminal penalty for violation.

Under 42 U.S.C. 290dd–2(f), any person who violates any provision of that statute or these regulations shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

§ 2.4 Reports of violations.

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations by an opioid treatment program may be directed to the United States Attorney for the judicial district in which the violation occurs as well as to the Substance Abuse and Mental Health Services Administration (SAMHSA) office responsible for opioid treatment program oversight.

Subpart B—General Provisions

§ 2.11 Definitions.

For purposes of these regulations:

Central registry means an organization which obtains from two or more member programs patient identifying information about individuals applying for withdrawal management or maintenance treatment for the purpose of avoiding an individual's concurrent enrollment in more than one treatment program.

Diagnosis means any reference to an individual's substance use disorder or to a condition which is identified as having been caused by that substance use disorder which is made for the purpose of treatment or referral for treatment.

Disclose means to communicate any information identifying a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person.

Federally assisted— see § 2.12(b).

Informant means an individual:

(1) Who is a patient or employee of a part 2 program or who becomes a patient or employee of a part 2 program at the request of a law enforcement agency or official; and

(2) Who at the request of a law enforcement agency or official observes

one or more patients or employees of the part 2 program for the purpose of reporting the information obtained to the law enforcement agency or official.

Maintenance treatment means pharmacotherapy for individuals with substance use disorders which reduces the pathological pursuit of reward and/or relief and supports remission of substance use disorder-related symptoms.

Member program means a withdrawal management or maintenance treatment program which reports patient identifying information to a central registry and which is in the same state as that central registry or is not more than 125 miles from any border of the state in which the central registry is located.

Minor, as used in these regulations, means an individual who has not attained the age of majority specified in the applicable state law, or if no age of majority is specified in the applicable state law, the age of eighteen years.

Part 2 program means a federally assisted program (federally assisted as defined in § 2.12(b) and program as defined in this section). See § 2.12(e)(1) for examples.

Part 2 program director means:

(1) In the case of a part 2 program which is an individual, that individual.

(2) In the case of a part 2 program which is an entity, the individual designated as director or managing director, or individual otherwise vested with authority to act as chief executive officer of the part 2 program.

Patient means any individual who has applied for or been given diagnosis, treatment, or referral for treatment for a substance use disorder at a part 2 program. *Patient* includes any individual who, after arrest on a criminal charge, is identified as an individual with a substance use disorder in order to determine that individual's eligibility to participate in a part 2 program. This definition includes both current and former patients.

Patient identifying information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient, as defined in this section, can be determined with reasonable accuracy either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a part 2 program, if that number does not consist of, or contain numbers (such as a social security, or driver's license number) which could be used to identify a patient with reasonable accuracy from sources external to the part 2 program.

Person means an individual, partnership, corporation, federal, state or local government agency, or any other legal entity, (also referred to as individual and/or entity).

Program means:

(1) An individual or entity (other than a general medical facility or general medical practice) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or

(2) An identified unit within a general medical facility or general medical practice that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or

(3) Medical personnel or other staff in a general medical facility or general medical practice whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.

Qualified service organization means an individual or entity who:

(1) Provides services to a part 2 program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, accounting, population health management, medical staffing, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and

(2) Has entered into a written agreement with a part 2 program under which that individual or entity:

(i) Acknowledges that in receiving, storing, processing, or otherwise dealing with any patient records from the part 2 program, it is fully bound by these regulations; and

(ii) If necessary, will resist in judicial proceedings any efforts to obtain access to patient identifying information related to substance use disorder diagnosis, treatment, or referral for treatment except as permitted by these regulations.

Records means any information, whether recorded or not, received or acquired by a part 2 program relating to a patient. For the purpose of these regulations, records include both paper and electronic records.

Substance use disorder means a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems such as impaired control, social impairment, risky use, and pharmacological tolerance and withdrawal. For the purposes of these regulations, this definition does not include tobacco or caffeine use. (Also referred to as substance abuse.)

Third-party payer means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of their family or on the basis of the patient's eligibility for federal, state, or local governmental benefits.

Treating provider relationship means that, regardless of whether there has been an actual in-person encounter:

(1) A patient agrees to be diagnosed, evaluated and/or treated for any condition by an individual or entity; and

(2) The individual or entity agrees to undertake diagnosis, evaluation and/or treatment of the patient, or consultation with the patient, for any condition.

Treatment means the care of a patient suffering from a substance use disorder, a condition which is identified as having been caused by the substance use disorder, or both, in order to reduce or eliminate the adverse effects upon the patient.

Undercover agent means any federal, state, or local law enforcement agency or official who enrolls in or becomes an employee of a part 2 program for the purpose of investigating a suspected violation of law or who pursues that purpose after enrolling or becoming employed for other purposes.

Withdrawal management means the use of pharmacotherapies to treat or attenuate the problematic signs and symptoms arising when heavy and/or prolonged substance use is reduced or discontinued.

§ 2.12 Applicability.

(a) *General*—(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information, whether or not recorded, which:

(i) Would identify a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person; and

(ii) Is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972 (part 2 program), or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (part 2 program); or if obtained before the pertinent date, is maintained by a part 2 program after that date as part of an ongoing treatment episode which extends past that date; for the purpose of treating a substance use disorder, making a diagnosis for that

treatment, or making a referral for that treatment.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient (42 U.S.C. 290dd–2(c)) applies to any information, whether or not recorded which is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972 (part 2 program), or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (part 2 program); or if obtained before the pertinent date, is maintained by a part 2 program after that date as part of an ongoing treatment episode which extends past that date; for the purpose of treating a substance use disorder, making a diagnosis for the treatment, or making a referral for the treatment.

(b) *Federal assistance.* A program is considered to be federally assisted if:

(1) It is conducted in whole or in part, whether directly or by contract or otherwise by any department or agency of the United States (but see paragraphs (c)(1) and (2) of this section relating to the Department of Veterans Affairs and the Armed Forces);

(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including but not limited to:

(i) Participating provider in the Medicare program;

(ii) Authorization to conduct maintenance treatment or withdrawal management; or

(iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of substance use disorders;

(3) It is supported by funds provided by any department or agency of the United States by being:

(i) A recipient of federal financial assistance in any form, including financial assistance which does not directly pay for the substance use disorder diagnosis, treatment, or referral for treatment; or

(ii) Conducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program; or

(4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.

(c) *Exceptions*—(1) *Department of Veterans Affairs.* These regulations do not apply to information on patients receiving substance use disorder treatment who are maintained in connection with the Department of Veterans Affairs provisions of hospital care, nursing home care, domiciliary care, and medical services under Title 38, U.S.C. Those records are governed by 38 U.S.C. 7332 and regulations issued under that authority by the Secretary of Veterans Affairs.

(2) *Armed Forces.* These regulations apply to any information described in paragraph (a) of this section which was obtained by any component of the Armed Forces during a period when the patient was subject to the Uniform Code of Military Justice except:

(i) Any interchange of that information within the Armed Forces; and

(ii) Any interchange of that information between the Armed Forces and those components of the Department of Veterans Affairs furnishing health care to veterans.

(3) *Communication within a part 2 program or between a part 2 program and an entity having direct administrative control over that part 2 program.* The restrictions on disclosure in these regulations do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of patients with substance use disorders if the communications are:

(i) Within a part 2 program; or

(ii) Between a part 2 program and an entity that has direct administrative control over the program.

(4) *Qualified service organizations.* The restrictions on disclosure in these regulations do not apply to communications between a part 2 program and a qualified service organization of information needed by the qualified service organization to provide services to the program.

(5) *Crimes on part 2 program premises or against part 2 program personnel.* The restrictions on disclosure and use in these regulations do not apply to communications from part 2 program personnel to law enforcement agencies or officials which:

(i) Are directly related to a patient's commission of a crime on the premises of the part 2 program or against part 2 program personnel or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(6) *Reports of suspected child abuse and neglect.* The restrictions on disclosure and use in these regulations do not apply to the reporting under state law of incidents of suspected child abuse and neglect to the appropriate state or local authorities. However, the restrictions continue to apply to the original substance use disorder patient records maintained by the part 2 program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

(d) *Applicability to recipients of information*—(1) *Restriction on use of information.* The restriction on the use of any information subject to these regulations to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from a part 2 program, regardless of the status of the person obtaining the information or whether the information was obtained in accordance with these regulations. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see § 2.17) or through patient access (see § 2.23) is subject to the restriction on use.

(2) *Restrictions on disclosures*—(i) *Third-party payers, administrative entities, and others.* The restrictions on disclosure in these regulations apply to:

(A) Third-party payers with regard to records disclosed to them by part 2 programs;

(B) Entities having direct administrative control over part 2 programs with regard to information that is subject to these regulations communicated to them by the part 2 program under paragraph (c)(3) of this section; and

(C) Individuals or entities who receive patient records directly from a part 2 program or other lawful holder of patient identifying information and who are notified of the prohibition on re-disclosure in accordance with § 2.32.

(ii) [Reserved]

(e) *Explanation of applicability*—(1) *Coverage.* These regulations cover any information (including information on referral and intake) about patients receiving a diagnosis, treatment, or referral for treatment for a substance use

disorder obtained by a part 2 program. Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners (other than general medical practices) who hold themselves out as providing, and provide substance use disorder diagnosis, treatment, or referral for treatment. However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of substance use disorder diagnosis, treatment, or referral for treatment and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

(2) *Federal assistance to program required.* If a patient's substance use disorder diagnosis, treatment, or referral for treatment is not provided by a part 2 program, that patient's record is not covered by these regulations. Thus, it is possible for an individual patient to benefit from federal support and not be covered by the confidentiality regulations because the program in which the patient is enrolled is not federally assisted as defined in paragraph (b) of this section. For example, if a federal court placed an individual in a private for-profit program and made a payment to the program on behalf of that individual, that patient's record would not be covered by these regulations unless the program itself received federal assistance as defined by paragraph (b) of this section.

(3) *Information to which restrictions are applicable.* Whether a restriction is on use or disclosure affects the type of information which may be available. The restrictions on disclosure apply to any information which would identify a patient as having or having had a substance use disorder. The restriction on use of information to bring criminal charges against a patient for a crime applies to any information obtained by the part 2 program for the purpose of diagnosis, treatment, or referral for treatment of patients with substance use disorders. (Note that restrictions on use and disclosure apply to recipients of information under paragraph (d) of this section.)

(4) *How type of diagnosis affects coverage.* These regulations cover any record of a diagnosis identifying a patient as having or having had a substance use disorder which is prepared in connection with the treatment or referral for treatment of a patient with a substance use disorder. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by these regulations. The following are not covered by these regulations:

(i) Diagnosis which is made solely for the purpose of providing evidence for use by law enforcement agencies or officials; or

(ii) A diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved does not have a substance use disorder (*e.g.,* involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

§ 2.13 Confidentiality restrictions and safeguards.

(a) *General.* The patient records subject to these regulations may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any federal, state, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in these regulations apply whether or not the part 2 program or other lawful holder of the patient identifying information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement agency or official or other government official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by these regulations.

(c) *Acknowledging the presence of patients: Responding to requests.* (1) The presence of an identified patient in a health care facility or component of a health care facility which is publicly identified as a place where only substance use disorder diagnosis, treatment, or referral for treatment is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of this part or if an authorizing court order is entered in accordance with subpart E of this part. The regulations permit acknowledgement of the presence of an identified patient in a health care facility or part of a health care facility if the health care facility is not publicly identified as only a substance use disorder diagnosis, treatment, or referral for treatment facility, and if the acknowledgement does not reveal that the patient has a substance use disorder.

(2) Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being, diagnosed or treated for a substance use disorder. An inquiring party may be provided a copy of these regulations and advised that they restrict the disclosure of substance use disorder patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient.

(d) *List of disclosures.* Upon request, patients who have consented to disclose their patient identifying information using a general designation pursuant to § 2.31(a)(4)(iv)(C) must be provided a list of entities to which their information has been disclosed pursuant to the general designation.

(1) Under this paragraph (d), patient requests:

(i) Must be made in writing; and

(ii) Are limited to disclosures made within the past two years;

(2) Under this paragraph (d), the entity named on the consent form that discloses information pursuant to a patient's general designation (the entity without a treating provider relationship that serves as an intermediary, as described in § 2.31(a)(4)(iv)) must:

(i) Respond in 30 or fewer days of receipt of the written request; and

(ii) Provide, for each disclosure, the name(s) of the entity(-ies) to which the disclosure was made, the date of the disclosure, and a brief description of the patient identifying information disclosed.

§ 2.14 Minor patients.

(a) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable state law to apply for and obtain substance use disorder treatment, any written consent for disclosure authorized under subpart C of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a part 2 program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a state or local law requiring the program to furnish the service irrespective of ability to pay.

(b) *State law requiring parental consent to treatment.* (1) Where state law requires consent of a parent, guardian, or other individual for a minor to obtain treatment for a substance use disorder, any written consent for disclosure authorized under subpart C of this part must be given by both the minor and their parent, guardian, or other individual authorized under state law to act in the minor's behalf.

(2) Where state law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with subpart C of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the part 2 program director under paragraph (c) of this section.

(c) *Minor applicant for services lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well-being of the applicant or any other individual may be disclosed to the parent, guardian, or other individual authorized under state law to act in the minor's behalf if the part 2 program director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of this part to their parent, guardian, or other individual authorized under state law to act in the minor's behalf; and

(2) The applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other individual authorized under state law to act in the minor's behalf.

§ 2.15 Incompetent and deceased patients.

(a) *Incompetent patients other than minors*—(1) *Adjudication of incompetence.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage their own affairs, any consent which is required under these regulations may be given by the guardian or other individual authorized under state law to act in the patient's behalf.

(2) *No adjudication of incompetency.* In the case of a patient, other than a minor or one who has been adjudicated incompetent, that for any period suffers from a medical condition that prevents knowing or effective action on their own behalf, the part 2 program director may exercise the right of the patient to consent to a disclosure under subpart C of this part for the sole purpose of obtaining payment for services from a third-party payer.

(b) *Deceased patients*—(1) *Vital statistics.* These regulations do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as having a substance use disorder is subject to these regulations. If a written consent to the disclosure is required, that consent may be given by an executor, administrator, or other personal representative appointed under applicable state law. If there is no such applicable state law appointment, the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

§ 2.16 Security for records.

(a) The part 2 program or other lawful holder of patient identifying information must have in place formal policies and procedures to reasonably protect against unauthorized uses and disclosures of patient identifying information and to protect against reasonably anticipated threats or hazards to the security of patient identifying information. These formal policies and procedures must address:

(1) Paper records, including:

(i) Transferring and removing such records; and

(ii) Destroying such records, including sanitizing the hard copy media associated with the paper printouts, to render the patient identifying information non-retrievable; and

(iii) Maintaining such records in a secure room, locked file cabinet, safe, or other similar container, or storage facility when not in use; and

(iv) Using and accessing workstations, secure rooms, locked file cabinets, safes, or other similar containers, and storage facilities that use or store such information; and

(v) Rendering patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (*e.g.,* removing direct identifiers).

(2) Electronic records, including:

(i) Copying, downloading, forwarding, transferring, and removing such records; and

(ii) Destroying such records, including sanitizing the electronic media on which it was stored, to render the patient identifying information non-retrievable; and

(iii) Maintaining such records; and

(iv) Using and accessing electronic records or other electronic media containing patient identifying information; and

(v) Rendering the patient identifying information non-identifiable in a manner that creates a very low risk of re-identification (*e.g.,* removing direct identifiers).

(b) [Reserved]

§ 2.17 Undercover agents and informants.

(a) *Restrictions on placement.* Except as specifically authorized by a court order granted under § 2.67, no part 2 program may knowingly employ, or enroll as a patient, any undercover agent or informant.

(b) *Restriction on use of information.* No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a part 2 program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient.

§ 2.18 Restrictions on the use of identification cards.

No person may require any patient to carry in their immediate possession while away from the part 2 program premises any card or other object which would identify the patient as having a substance use disorder. This section does not prohibit a person from requiring patients to use or carry cards or other identification objects on the premises of a part 2 program.

§ 2.19 Disposition of records by discontinued programs.

(a) *General.* If a part 2 program discontinues operations or is taken over or acquired by another program, it must remove patient identifying information from its records or destroy its records, including sanitizing any associated hard copy or electronic media, to render the patient identifying information non-retrievable in a manner consistent with the policies and procedures established under § 2.16, unless:

(1) The patient who is the subject of the records gives written consent (meeting the requirements of § 2.31) to a transfer of the records to the acquiring program or to any other program designated in the consent (the manner of obtaining this consent must minimize the likelihood of a disclosure of patient identifying information to a third party); or

(2) There is a legal requirement that the records be kept for a period specified by law which does not expire until after the discontinuation or acquisition of the part 2 program.

(b) *Special procedure where retention period required by law.* If paragraph (a)(2) of this section applies:

(1) Records, which are paper, must be:

(i) Sealed in envelopes or other containers labeled as follows: ''Records of [insert name of program] required to be maintained under [insert citation to statute, regulation, court order or other legal authority requiring that records be kept] until a date not later than [insert appropriate date]''; and

(A) All hard copy media from which the paper records were produced, such as printer and facsimile ribbons, drums, etc., must be sanitized to render the data non-retrievable; and

(B) [Reserved]

(ii) Held under the restrictions of these regulations by a responsible person who must, as soon as practicable after the end of the retention period specified on the label, destroy the records and sanitize any associated hard copy media to render the patient identifying information non-retrievable in a manner consistent with the discontinued program's or acquiring program's policies and procedures established under § 2.16.

(2) Records, which are electronic, must be:

(i) Transferred to a portable electronic device with implemented encryption to encrypt the data at rest so that there is a low probability of assigning meaning without the use of a confidential process or key and implemented access controls for the confidential process or key; and

(A) All electronic media on which the patient records or patient identifying information resided prior to being transferred to the device, including email and other electronic communications, must be sanitized to render the patient identifying information non-retrievable in a manner consistent with the discontinued program's or acquiring program's policies and procedures established under § 2.16; and

(B) The device must be:

(*1*) Sealed in a container along with any equipment needed to read or access the information, and labeled as follows: ''Records of [insert name of program] required to be maintained under [insert citation to statute, regulation, court order or other legal authority requiring that records be kept] until a date not later than [insert appropriate date];'' and

(*2*) Held under the restrictions of these regulations by a responsible person who must store the container in a manner that will protect the information (*e.g.,* climate controlled environment); and

(C) The responsible person must be included on the access control list and be provided a means for decrypting the data. The responsible person must store the decryption tools on a device or at a location separate from the data they are used to encrypt or decrypt; and

(D) As soon as practicable after the end of the retention period specified on the label, the portable electronic device must be sanitized to render the patient identifying information non-retrievable consistent with the policies established under § 2.16.

(ii) [Reserved]

§ 2.20 Relationship to state laws.

The statute authorizing these regulations (42 U.S.C. 290dd-2) does not preempt the field of law which they cover to the exclusion of all state laws in that field. If a disclosure permitted under these regulations is prohibited under state law, neither these regulations nor the authorizing statute may be construed to authorize any violation of that state law. However, no state law may either authorize or compel any disclosure prohibited by these regulations.

§ 2.21 Relationship to federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by these regulations and by administrative action taken under section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR part 1316); or section 301(d) of the Public Health Service Act (42 U.S.C. 241(d) and the implementing regulations at 42 CFR part 2a). These research privilege statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* These regulations restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under subpart E of this part of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes.

§ 2.22 Notice to patients of federal confidentiality requirements.

(a) *Notice required.* At the time of admission to a part 2 program or as soon thereafter as the patient is capable of rational communication, each part 2 program shall:

(1) Communicate to the patient that federal law and regulations protect the confidentiality of substance use disorder patient records; and

(2) Give to the patient a summary in writing of the federal law and regulations.

(b) *Required elements of written summary.* The written summary of the federal law and regulations must include:

(1) A general description of the limited circumstances under which a part 2 program may acknowledge that an individual is present or disclose outside the part 2 program information identifying a patient as having or having had a substance use disorder.

(2) A statement that violation of the federal law and regulations by a part 2 program is a crime and that suspected violations may be reported to appropriate authorities consistent with § 2.4, along with contact information.

(3) A statement that information related to a patient's commission of a crime on the premises of the part 2 program or against personnel of the part 2 program is not protected.

(4) A statement that reports of suspected child abuse and neglect made under state law to appropriate state or local authorities are not protected.

(5) A citation to the federal law and regulations.

(c) *Program options.* The part 2 program must devise a notice to comply with the requirement to provide the patient with a summary in writing of the federal law and regulations. In this written summary, the part 2 program also may include information concerning state law and any of the part 2 program's policies that are not inconsistent with state and federal law on the subject of confidentiality of substance use disorder patient records.

§ 2.23 Patient access and restrictions on use.

(a) *Patient access not prohibited.* These regulations do not prohibit a part 2 program from giving a patient access to their own records, including the opportunity to inspect and copy any records that the part 2 program

maintains about the patient. The part 2 program is not required to obtain a patient's written consent or other authorization under these regulations in order to provide such access to the patient.

(b) *Restriction on use of information.* Information obtained by patient access to their patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 2.12(d)(1).

Subpart C—Disclosures With Patient Consent

§ 2.31 Consent requirements.

(a) *Required elements for written consent.* A written consent to a disclosure under these regulations may be paper or electronic and must include:

(1) The name of the patient.

(2) The name of the part 2 program(s) or other lawful holder(s) of the patient identifying information permitted to make the disclosure.

(3) How much and what kind of information is to be disclosed, including an explicit description of the substance use disorder information that may be disclosed.

(4)(i) The name(s) of the individual(s) to whom a disclosure is to be made; or

(ii) If the entity has a treating provider relationship with the patient whose information is being disclosed, such as a hospital, a health care clinic, or a private practice, the name of that entity; or

(iii) If the entity does not have a treating provider relationship with the patient whose information is being disclosed and is a third-party payer that requires patient identifying information for the purpose of reimbursement for services rendered to the patient by the part 2 program, the name of the entity; or

(iv) If the entity does not have a treating provider relationship with the patient whose information is being disclosed and is not covered by paragraph (a)(4)(iii) of this section, such as an entity that facilitates the exchange of health information or a research institution, the name(s) of the entity(-ies); and

(A) The name(s) of an individual participant(s); or

(B) The name(s) of an entity participant(s) that has a treating provider relationship with the patient whose information is being disclosed; or

(C) A general designation of an individual or entity participant(s) or class of participants that must be limited to a participant(s) who has a treating provider relationship with the patient whose information is being disclosed.

(*1*) When using a general designation, a statement must be included on the consent form that the patient (or other individual authorized to sign in lieu of the patient), confirms their understanding that, upon their request and consistent with this part, they must be provided a list of entities to which their information has been disclosed pursuant to the general designation (see § 2.13(d)).

(*2*) [Reserved]

(5) The purpose of the disclosure.

(6) A statement that the patient (or other individual authorized to sign in lieu of the patient) confirms their understanding of the terms of their consent.

(7) A statement that the consent is subject to revocation at any time except to the extent that the part 2 program or other lawful holder of patient identifying information that is permitted to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third-party payer.

(8) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is provided.

(9) The signature of the patient and, when required for a patient who is a minor, the signature of an individual authorized to give consent under § 2.14; or, when required for a patient who is incompetent or deceased, the signature of an individual authorized to sign under § 2.15. Electronic signatures are permitted to the extent that they are not prohibited by any applicable law.

(10) The date on which the consent is signed.

(b) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through reasonable diligence could be known, by the individual or entity holding the records to be materially false.

§ 2.32 Prohibition on re-disclosure.

(a) *Notice to accompany disclosure.* Each disclosure made with the patient's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is *NOT* sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any patient with a substance use disorder, except as provided at § 2.12(c)(5).

(b) [Reserved]

§ 2.33 Disclosures permitted with written consent.

If a patient consents to a disclosure of their records under § 2.31, a program may disclose those records in accordance with that consent to any person identified in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 2.34 and 2.35, respectively.

§ 2.34 Disclosures to prevent multiple enrollments.

(a) *Restrictions on disclosure.* A part 2 program, as defined in § 2.11, may disclose patient records to a central registry or to any withdrawal management or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

(i) Patient identifying information;

(ii) Type and dosage of the drug; and

(iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 2.31, except that:

(i) The consent must list the name and address of each central registry and each known withdrawal management or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any withdrawal management or maintenance treatment

program established within 200 miles of the program after the consent is given without naming any such program.

(b) *Use of information limited to prevention of multiple enrollments.* A central registry and any withdrawal management or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not re-disclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under subpart E of this part.

(c) *Permitted disclosure by a central registry to prevent a multiple enrollment.* When a member program asks a central registry if an identified patient is enrolled in another member program and the registry determines that the patient is so enrolled, the registry may disclose:

(1) The name, address, and telephone number of the member program(s) in which the patient is already enrolled to the inquiring member program; and

(2) The name, address, and telephone number of the inquiring member program to the member program(s) in which the patient is already enrolled. The member programs may communicate as necessary to verify that no error has been made and to prevent or eliminate any multiple enrollments.

(d) *Permitted disclosure by a withdrawal management or maintenance treatment program to prevent a multiple enrollment.* A withdrawal management or maintenance treatment program which has received a disclosure under this section and has determined that the patient is already enrolled may communicate as necessary with the program making the disclosure to verify that no error has been made and to prevent or eliminate any multiple enrollments.

§ 2.35 Disclosures to elements of the criminal justice system which have referred patients.

(a) A part 2 program may disclose information about a patient to those individuals within the criminal justice system who have made participation in the part 2 program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (*e.g.,* a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or post-trial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent meeting the requirements of § 2.31 (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the part 2 program, the patient, and the individual(s) within the criminal justice system who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) *Restrictions on re-disclosure and use.* An individual within the criminal justice system who receives patient information under this section may re-disclose and use it only to carry out that individual's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

Subpart D—Disclosures Without Patient Consent

§ 2.51 Medical emergencies.

(a) *General rule.* Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained.

(b) *Special rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* Immediately following disclosure, the part 2 program shall document, in writing, the disclosure in the patient's records, including:

(1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(2) The name of the individual making the disclosure;

(3) The date and time of the disclosure; and

(4) The nature of the emergency (or error, if the report was to FDA).

§ 2.52 Research.

(a) Patient identifying information may be disclosed by the part 2 program or other lawful holder of part 2 data for the purpose of conducting scientific research if the individual designated as director or managing director, or individual otherwise vested with authority to act as chief executive officer or their designee makes a determination that the recipient of the patient identifying information:

(1) If a Health Insurance Portability and Accountability Act (HIPAA) covered entity or business associate, has obtained and documented authorization, or a waiver or alteration of authorization, consistent with the HIPAA privacy rule at 45 CFR 164.512(i); or

(2) If subject to the HHS regulations regarding the protection of human subjects (45 CFR part 46), provides documentation that the researcher is in compliance with the requirements of the HHS regulations, including the requirements related to informed consent or a waiver of consent (45 CFR 46.111 and 46.116); or

(3) If both a HIPAA covered entity or business associate and subject to the HHS regulations regarding the protection of human subjects, has met the requirements of paragraphs (a)(1) and (2) of this section; and

(b) Any individual or entity conducting scientific research using patient identifying information obtained under paragraph (a) of this section:

(1) Is fully bound by these regulations and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

(2) Must not re-disclose patient identifying information except back to the individual or entity from whom that patient identifying information was obtained or as permitted under paragraph (b)(4) of this section.

(3) May include part 2 data in reports only in aggregate form to limit the

potential for the disclosure of patient identities.

(4) That requests linkages to data sets from a federal data repository(-ies) holding patient identifying information must have the request reviewed and approved by an Institutional Review Board (IRB) registered with the Department of Health and Human Services, Office for Human Research Protections in accordance with 45 CFR part 46 to ensure that patient privacy is considered and the need for identifiable data is justified.

(i) Upon request, the researcher may be required to provide evidence of the IRB approval of the research project that contains the data linkage component.

(ii) Except as provided in paragraph (b) of this section, a researcher may not use patient identifying information for data linkages purposes.

(5) Must maintain and destroy patient identifying information in accordance with the security policies and procedures established under § 2.16.

(6) Must retain records in compliance with applicable federal, state, and local record retention laws.

§ 2.53 Audit and evaluation.

(a) *Records not copied or removed.* If patient records are not downloaded, copied or removed from the part 2 program premises or forwarded electronically to another electronic system or device, patient identifying information, as defined in § 2.11, may be disclosed in the course of a review of records on the part 2 program premises to any individual or entity who agrees in writing to comply with the limitations on re-disclosure and use in paragraph (d) of this section and who:

(1) Performs the audit or evaluation on behalf of:

(i) Any federal, state, or local government agency which provides financial assistance to the part 2 program or is authorized by law to regulate its activities; or

(ii) Any individual or entity who provides financial assistance to the part 2 program, which is a third-party payer covering patients in the part 2 program, or which is a quality improvement organization performing a utilization or quality control review; or

(2) Is determined by the part 2 program to be qualified to conduct an audit or evaluation of the part 2 program.

(b) *Copying, removing, downloading, or forwarding patient records.* Records containing patient identifying information, as defined in § 2.11, may be copied or removed from a part 2 program premises or downloaded or forwarded to another electronic system or device from the part 2 program's electronic records by any individual or entity who:

(1) Agrees in writing to:

(i) Maintain and destroy the patient identifying information in a manner consistent with the policies and procedures established under § 2.16;

(ii) Retain records in compliance with applicable federal, state, and local record retention laws; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section; and

(2) Performs the audit or evaluation on behalf of:

(i) Any federal, state, or local government agency which provides financial assistance to the part 2 program or is authorized by law to regulate its activities; or

(ii) Any individual or entity who provides financial assistance to the part 2 program, which is a third-party payer covering patients in the part 2 program, or which is a quality improvement organization performing a utilization or quality control review.

(c) *Medicare, Medicaid, Children's Health Insurance Program (CHIP), or related audit or evaluation.* (1) Patient identifying information, as defined in § 2.11, may be disclosed under paragraph (c) of this section to any individual or entity for the purpose of conducting a Medicare, Medicaid, or CHIP audit or evaluation, including an audit or evaluation necessary to meet the requirements for a Centers for Medicare & Medicaid Services (CMS)-regulated accountable care organization (CMS-regulated ACO) or similar CMS-regulated organization (including a CMS-regulated Qualified Entity (QE)), if the individual or entity agrees in writing to comply with the following:

(i) Maintain and destroy the patient identifying information in a manner consistent with the policies and procedures established under § 2.16;

(ii) Retain records in compliance with applicable federal, state, and local record retention laws; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section.

(2) A Medicare, Medicaid, or CHIP audit or evaluation under this section includes a civil or administrative investigation of a part 2 program by any federal, state, or local government agency with oversight responsibilities for Medicare, Medicaid, or CHIP and includes administrative enforcement, against the part 2 program by the government agency, of any remedy authorized by law to be imposed as a result of the findings of the investigation.

(3) An audit or evaluation necessary to meet the requirements for a CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE) must be conducted in accordance with the following:

(i) A CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE) must:

(A) Have in place administrative and clinical systems; and

(B) Have in place a leadership and management structure, including a governing body and chief executive officer with responsibility for oversight of the organization's management and for ensuring compliance with and adherence to the terms and conditions of the Participation Agreement with CMS; and

(ii) A CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE) must have a signed Participation Agreement with CMS, which provides that the CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE):

(A) Is subject to periodic evaluations by CMS, or is required by CMS to evaluate participants in the CMS-regulated ACO or similar CMS-regulated organization (including a CMS-regulated QE) relative to CMS-defined or approved quality and/or cost measures;

(B) Must designate an executive who has the authority to legally bind the organization to ensure compliance with 42 U.S.C. 290dd-2 and this part and the terms and conditions of the Participation Agreement in order to receive patient identifying information from CMS;

(C) Agrees to comply with all applicable provisions of 42 U.S.C. 290dd-2 and this part;

(D) Must ensure that any audit or evaluation involving patient identifying information occurs in a confidential and controlled setting approved by the designated executive;

(E) Must ensure that any communications or reports or other documents resulting from an audit or evaluation under this section do not allow for the direct or indirect identification of a patient as having or having had a substance use disorder; and

(F) Must establish policies and procedures to protect the confidentiality of the patient identifying information consistent with this part, the terms and conditions of the Participation Agreement, and the requirements set forth in paragraph (c)(1) of this section.

(4) Program, as defined in § 2.11, includes an employee of, or provider of medical services under the program

when the employee or provider is the subject of a civil investigation or administrative remedy, as those terms are used in paragraph (c)(2) of this section.

(5) If a disclosure to an individual or entity is authorized under this section for a Medicare, Medicaid, or CHIP audit or evaluation, including a civil investigation or administrative remedy, as those terms are used in paragraph (c)(2) of this section, then a quality improvement organization which obtains the information under paragraph (a) or (b) of this section may disclose the information to that individual or entity but only for the purpose of conducting a Medicare, Medicaid, or CHIP audit or evaluation.

(6) The provisions of this paragraph do not authorize the part 2 program, the federal, state, or local government agency, or any other individual or entity to disclose or use patient identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the audit or evaluation as specified in paragraph (c) of this section.

(d) *Limitations on disclosure and use.* Except as provided in paragraph (c) of this section, patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under § 2.66.

Subpart E—Court Orders Authorizing Disclosure and Use

§ 2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290dd–2 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.

(b) *Examples.* (1) A person holding records subject to these regulations receives a subpoena for those records. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.

(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of these regulations.

§ 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under these regulations may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

§ 2.63 Confidential communications.

(a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a part 2 program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(b) [Reserved]

§ 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be provided:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-

patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

§ 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any law enforcement or prosecutorial officials who are responsible for conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 2.66 is sought with an order under this section, the person holding the records must be provided

(1) Adequate notice (in a manner which will not disclose patient identifying information to other persons) of an application by a law enforcement agency or official;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a law enforcement agency or official.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the part 2 program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a law enforcement agency or official that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within federal, state, or local government has in fact been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

§ 2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a part 2 program or the person holding the records.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a part 2 program or the person holding the records (or employees or agents of that part 2 program or person holding the records) may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a part 2 program or the person holding the records (or agents or employees of the part 2 program or person holding the records) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has provided a written consent (meeting the requirements of § 2.31) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the part 2 program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of § 2.64.

(d) *Limitations on disclosure and use of patient identifying information.* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 2.65.

§ 2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a part 2 program.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a part 2 program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the part 2 program are engaged in criminal misconduct.

(b) *Notice.* The part 2 program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The part 2 program director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The part 2 program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of the part 2 program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the part 2 program outweigh the potential injury to patients of the part 2 program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a part 2 program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the part 2 program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the part 2 program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed in a part 2 program under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 2.65.

Dated: February 2, 2016.

Kana Enomoto,

Acting Administrator, Substance Abuse and Mental Health Services Administration.

Approved: February 4, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

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