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Contents

Federal Register

Vol. 79, No. 170

Wednesday, September 3, 2014

Agency for Healthcare Research and Quality
NOTICES
Requests for Information:
Diagnosis of Gout, 52337–52339
Emerging Approaches to Diagnosis, Treatment of Non-Muscle-Invasive Bladder Cancer, 52339–52341

Agricultural Marketing Service
NOTICES
Meetings:
Fruit and Vegetable Industry Advisory Committee, 52297–52298

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52297

Air Force Department
NOTICES
Military Freight Traffic Unified Rules Publication:
Air Transportation Service Provider Rules and Domestic Air Tender Freight Carrier Registration Program; Revisions, 52307

Alcohol and Tobacco Tax and Trade Bureau
RULES
Electronic Submission of Forms:
Finished Products Records for Distilled Spirits Plants, and Closures on Certain Distilled Spirits Products; Correction, 52198–52199
PROPOSED RULES
Proposed Expansions:
Sta. Rita Hills Viticultural Area, 52273

Antitrust Division
NOTICES
Changes under National Cooperative Research and Production Act:
SEMATECH, Inc., d/b/a International SEMATECH, 52364
SGIP 2.0, Inc., 52363–52364
U.S. Photovoltaic Manufacturing Consortium, Inc., 52364

Antitrust
See Antitrust Division

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52341–52344

Coast Guard
RULES
Safety Zones:
Urban Shield 2014; South San Francisco Bay, Oakland, CA, 52199–52201
NOTICES
Meetings:
Commercial Fishing Safety Advisory Committee, 52347–52348

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

Commodity Credit Corporation
PROPOSED RULES
Environmental Policies and Procedures:
Compliance with the National Environmental Policy Act and Related Authorities, 52239–52259

Defense Department
See Air Force Department
PROPOSED RULES
Freedom of Information Act Program, 52500–52524
NOTICES
Comprehensive Review of the Military Justice System; Revision, 52306–52307

Education Department
PROPOSED RULES
Negotiated Rulemaking Committees:
Public Hearings, 52273–52275
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
An Impact Evaluation of the Teacher Incentive Fund, 52308
Middle Grades Longitudinal Study of 2016–2017 2015 Field Test, 52307–52308
Progress in International Reading Literacy Study Field Test and Recruitment for Main Study, 52309

Employee Benefits Security Administration
NOTICES
Meetings:
Advisory Council on Employee Welfare and Pension Benefit Plans; Teleconference, 52364–52365
Proposed Exemptions:
Credit Suisse AG, Zurich, Switzerland, 52365–52371

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Biological and Environmental Research Advisory Committee, 52313
Commission to Review the Effectiveness of the National Energy Laboratories, 52311–52312
Electricity Advisory Committee, 52312–52313
Environmental Management Site-Specific Advisory Board Chairs, 52310
Fusion Energy Sciences Advisory Committee, 52309–52310
President's Council of Advisors on Science and Technology, 52310–52311

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and Promulgations:
- Arizona; Regional Haze and Interstate Visibility Transport Federal Implementation Plan, 52420–52498
- California; South Coast 1-Hour and 8-Hour Ozone, 52526–52538
- California; South Coast VMT Emissions Offset Demonstrations, 52539–52542

Designation of Areas for Air Quality Planning Purposes:
- State of Arizona; Pinal County and Gila County; Pb, 52205–52210

Pesticide Tolerances:
- Saflufenacil, 52215–52220
- Trifloxystrobin, 52210–52215

State Hazardous Waste Management Program Revisions:
- Texas; Final Authorization, 52220–52224

State Plans for Designated Facilities and Pollutants; Approvals and Promulgations:
- New Hampshire; Large and Small Municipal Waste Combustors, 52201–52205

PROPOSED RULES

State Hazardous Waste Management Program Revisions:
- Texas; Final Authorization, 52275–52276

State Plans for Designated Facilities and Pollutants; Approvals and Promulgations:
- New Hampshire; Large and Small Municipal Waste Combustors, 52275

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
- Reformulated Gasoline and Conventional Gasoline; Requirements for Refiners, Oxygenate Blenders and Importers of Gasoline, Requirements for Parties in the Gasoline Distribution Network, 52317–52318

Cross-Media Electronic Reporting:
- Authorized Program Revision Approval, Arizona, 52318–52319

Environmental Impact Statements; Availability, etc., 52319

Standards under the Clean Air Act:
- Database System of Agency Applicability Determinations, Alternative Monitoring Decisions and Regulatory Interpretations, 52319–52334

Farm Service Agency

PROPOSED RULES

Environmental Policies and Procedures:
- Compliance with the National Environmental Policy Act and Related Authorities, 52239–52259

Federal Aviation Administration

RULES

Airworthiness Directives:
- Airbus Airplanes, 52174–52177, 52181–52187
- Dassault Aviation Airplanes, 52187–52190
- Pratt and Whitney Canada Corp. Turboprop Engines, 52172–52174
- The Boeing Company Airplanes, 52190–52192
- Various de Havilland Airplanes, 52177–52180

Establishment of Class E Airspace:
- Albuquerque, NM, 52192–52193

Modification of Class E Airspace:
- Hulett, WY, 52194

Special Conditions:
- Embraer S.A.; Model EMB–550 Airplane; Flight Envelope Protection: High Incidence Protection System, 52165–52169
- Gulfstream Aerospace Corporation, Model GVI; Electro Hydraulically Actuated Seats Equipped with a Backup Power Supply, 52169–52171

PROPOSED RULES

Airworthiness Directives:
- Airbus Airplanes, 52263–52269
- BAE Systems (Operations) Limited Airplanes, 52260–52263, 52270–52273

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
- Aircraft Registration, 52404
- Commercial Space Transportation Licensing Regulations, 52405–52406
- Flight Engineers and Flight Navigators, 52404–52405
- General Aviation Awards Program, 52405
- General Operating and Flight Rules, 52404
- Malfunction or Defect Report, 52406–52407
- Rotorcraft External Load Operator Certificate Application, 52406

Federal Communications Commission

RULES

Amateur Service Rules; Corrections, 52226

Radio Broadcasting Services:
- Caseville, Harbor Beach, Lexington, and Pigeon, MI, 52225–52226

Rules Governing the Licensing of, and Spectrum Usage By, Commercial Earth Stations and Space Stations, 52224–52225

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52334–52335

Federal Deposit Insurance Corporation

NOTICES

Terminations of Receiverships:
- Flagship National Bank, Bradenton, FL, 52335

Federal Emergency Management Agency

NOTICES

Meetings:
- Board of Visitors for the National Fire Academy, 52348–52349

Federal Energy Regulatory Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52313–52315

Combined Filings, 52315–52316

Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
- Ioway Energy, LLC, 52316–52317

Waiver Petitions:
- Whiting Oil and Gas Corp., 52317

Federal Financial Institutions Examination Council

NOTICES

Meetings:
- Appraisal Subcommittee, 52335–52336

Federal Highway Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52407

Final Federal Agency Actions on Proposed Highway in West Virginia and Maryland, 52407–52409

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 52336

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52409–52413

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 52336

Fish and Wildlife Service
RULES
Migratory Bird Hunting:
Hunting on Certain Federal Indian Reservations and Ceded Lands for the 2014–15 Early Season, 52226–52238

Food and Drug Administration
RULES
Medical Devices; Hematology and Pathology Devices:
Early Growth Response 1 Gene Fluorescence In-Situ Hybridization Test System for Specimen Characterization; Classification, 52195–52197

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Property, 52414–52415

Foreign-Trade Zones Board
NOTICES
Applications for Reorganization (Expansion of Service Area) under the Alternative Site Framework:
Foreign-Trade Zone 286, Caledonia, Essex and Orleans Counties, VT, 52300

Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Stewardship Mapping and Assessment Project, 52298–52299
Meetings:
Hood/Willamette Resource Advisory Committee, 52299–52300

General Services Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Department of State Foreign Affairs Security Training Center in Nottoway County, VA, 52336–52337

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Delta States Rural Development Network Grant Program, 52344–52345

Healthcare Research and Quality Agency
See Agency for Healthcare Research and Quality

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for FHA Insured Mortgages, 52352–52353
Application for Healthy Homes and Lead Hazard Control Grant Programs, Quality Assurance Plans, 52349–52350
Budget-Based Rent Increases, 52350
Choice Neighborhoods Evaluation, Phase II, 52353–52354
Congregate Housing Services Program, 52351–52352
Public Housing Assessment System Appeals, Unaudited Financial Statement Submission Extensions; Assisted and Insured Housing Property Inspection Technical Reviews and Database Adjustments, 52354–52355
Rent Reform Demonstration (Task Order 1), 52350–52351
Regulatory Waiver Requests:
Second Quarter; Calendar Year 2014, 52355–52362

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Oil Country Tubular Goods from the People's Republic of China, 52301–52303
Certain Oil Country Tubular Goods from Ukraine, 52303–52304
Certain Preserved Mushrooms from India, 52300–52301

Justice Department
See Antitrust Division
NOTICES
Proposed Consent Decrees under the Clean Air Act, CERCLA, and EPCRA, 52363

Labor Department
See Employee Benefits Security Administration

Land Management Bureau
NOTICES
Meetings:
Western Montana Resource Advisory Council, 52363

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Archives and Records Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 52372

National Institute of Standards and Technology
NOTICES
Performance Review Board Memberships, 52304–52305

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 52346
National Institute of Allergy and Infectious Diseases, 52345–52346
National Institute on Aging, 52346
Transfer of Ownership, 52346–52347

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 52372

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered and Threatened Wildlife:
90–Day Finding on a Petition to List Seven Indo-Pacific Species of Pomacentrid Reef Fish as Threatened or Endangered Under the Endangered Species Act, 52276–52293
Fisheries of the Northeastern United States:
Tilefish Fishery; 2015–2017 Specifications, 52293–52296
NOTICES
Meetings:
Atlantic Shark Identification Workshops; Protected Species Safe Handling, Release, and Identification Workshops, 52305–52306

National Science Foundation
NOTICES
Accelerating the Big Data Innovation Ecosystem, 52372–52373

Nuclear Regulatory Commission
NOTICES
Environmental Issues Associated with New Reactors, 52373–52374
Guidance for Industry and Staff:
Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions, 52374–52375
License Amendment Applications:
Northern States Power Company; Prairie Island Independent Spent Fuel Storage Installation, 52375–52378
Meetings:
Advisory Committee on Reactor Safeguards, Subcommittee on Fukushima, 52379
Advisory Committee on Reactor Safeguards, Subcommittees on Plant License Renewal and Structural Analysis, 52378
Advisory Committee on Reactor Safeguards; Subcommittee on Reliability and Probabilistic Risk Assessment, 52379–52380
Subcommittee on Reliability and PRA, Advisory Committee on Reactor Safeguards, 52378–52379

Rural Business-Cooperative Service
PROPOSED RULES
Environmental Policies and Procedures:
Compliance with the National Environmental Policy Act and Related Authorities, 52239–52259

Rural Housing Service
PROPOSED RULES
Environmental Policies and Procedures:
Compliance with the National Environmental Policy Act and Related Authorities, 52239–52259

Rural Utilities Service
PROPOSED RULES
Environmental Policies and Procedures:
Compliance with the National Environmental Policy Act and Related Authorities, 52239–52259

Securities and Exchange Commission
NOTICES
Applications:
Advisors Series Trust and Vivaldi Asset Management, LLC, 52380–52382
Meetings; Sunshine Act, 52382
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 52382–52384
BATS Y-Exchange, Inc., 52384–52385
NYSE Arca, Inc., 52385–52403

State Department
RULES
Schedule of Fees:
Consular Services; Visa and Citizenship Services Fee Changes; Correction, 52197

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Foreign Assets Control Office
See United States Mint
NOTICES
Meetings:
President's Advisory Council on Financial Capability for Young Americans, 52413–52414

United States Mint
NOTICES
Pricing for the 2014 Discovery Set, 52415

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death, 52416
Report of Treatment in Hospital, 52416–52417
Restored Entitlement Program for Survivors Annual Eligibility Report, 52415
Student Beneficiary Report – Restored Entitlement Program for Survivors, 52415–52416

Separate Parts In This Issue

Part II
Environmental Protection Agency, 52420–52498

Part III
Defense Department, 52500–52524

Part IV
Environmental Protection Agency, 52526–52542

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, 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.

7 CFR

Proposed Rules:

761.....52239
762.....52239
763.....52239
764.....52239
765.....52239
766.....52239
767.....52239
770.....52239
772.....52239
773.....52239
774.....52239
799.....52239
1436.....52239
1940 (2 documents) 52239

14 CFR

25 (2 documents) 52165, 52169
39 (7 documents) 52172, 52174, 52177, 52181, 52184, 52187, 52190
71 (2 documents) 52192, 52194

Proposed Rules:

39 (4 documents) 52260, 52263, 52267, 52270

21 CFR

864.....52195

22 CFR

22.....52197

27 CFR

73.....52198

Proposed Rules:

9.....52273

32 CFR

Proposed Rules:

286.....52500

33 CFR

165.....52199

34 CFR

Proposed Rules:

Ch.VI.....52273

40 CFR

52 (3 documents) 52420, 52526, 52539
62.....52201
81.....52205
180 (2 documents) 52210, 52215
271.....52220

Proposed Rules:

62.....52275
271.....52275

47 CFR

25.....52224
73.....52225
97.....52226

50 CFR

20.....52226

Proposed Rules:

223.....52276
648.....52293

Rules and Regulations

Federal Register
Vol. 79, No. 170
Wednesday, September 3, 2014

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.FAA–2014–0366; Special Conditions No. 25–564–SC]

Special Conditions: Embraer S.A.; Model EMB–550 Airplane; Flight Envelope Protection: High Incidence Protection System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer S.A. Model EMB–550 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology and design envisioned in the airworthiness standards for transport category airplanes. This design feature is a high incidence protection system that limits the angle of attack at which the airplane can be flown during normal low speed operation. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective date:* September 3, 2014.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2009, Embraer S.A. applied for a type certificate for its new Model EMB–550 airplane, which was subsequently revised to August 29, 2009. The Model EMB–550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The airplane has a configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB–550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell AS907–3–1E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Embraer S.A. must show that the Model EMB–550 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–128 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB–550 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–550 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

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

Novel or Unusual Design Features

The Model EMB–550 will incorporate the following novel or unusual design features: A high incidence protection system that replaces the stall warning system during normal operating conditions, prohibits the airplane from stalling, limits the angle of attack at which the airplane can be flown during normal low speed operation, and that cannot be overridden by the flightcrew. The application of this angle-of-attack limit impacts the stall speed determination, the stall characteristics and stall warning demonstration, and the longitudinal handling characteristics. The current regulations do not address this type of protection feature.

Discussion

The high incidence protection function prevents the airplane from stalling at low speeds, and, therefore, a stall warning system is not needed during normal flight conditions. However, if there is a failure of the high incidence protection function that is not shown to be extremely improbable, stall warning must be provided in a conventional manner. Also the flight characteristics at the angle of attack for maximum lift coefficient (C_{Lmax}) must be suitable in the traditional sense.

These special conditions address this novel or unusual design feature on the EMB–550. These special conditions, which include airplane performance requirements, establish a level of safety equivalent to the current regulations for reference stall speeds, stall warning, stall characteristics, and miscellaneous other minimum reference speeds.

Discussion of the Comments

Notice of proposed special conditions No. 25–14–04–SC for the Embraer Model EMB–550 airplane was published in the **Federal Register** on June 10, 2014, (79 FR 33140). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model EMB–550 airplane. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same

novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer Model EMB–550 airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for Embraer S.A. Model EMB–550.

Flight Envelope Protection: High Incidence Protection System

The current airworthiness standards do not contain adequate safety standards for the unique features of the high incidence protection system on the Embraer EMB–550. Part I of the following special conditions are issued in lieu of the specified paragraphs of §§ 25.21, 25.103, 25.145, 25.201, 25.203, 25.207, and 25.1323. Part II are in lieu of the specified paragraphs of §§ 25.103, 25.105, 25.107, 25.121, 25.123, 25.125, 25.143, and 25.207.

Special Conditions Part I

Stall Protection and Scheduled Operating Speeds

The following special conditions are in lieu of §§ 25.21(b), 25.103, 25.145(a), 25.145(b)(6), 25.201, 25.203, 25.207, and 25.1323(d).

Foreword

In the following paragraphs, ''in icing conditions'' means with the ice accretions (relative to the relevant flight phase) as defined in 14 CFR part 25, Amendment 121, appendix C.

1. Definitions.

These special conditions address a novel or unusual design feature of the EMB–550 airplane and use terminology that does not appear in 14 CFR part 25.

These terms relating to the novel or unusual design feature addressed by these special conditions are the following:

- High incidence protection system: A system that operates directly and automatically on the airplane's flying controls to limit the maximum angle of attack that can be attained to a value below that at which an aerodynamic stall would occur.
- Alpha-limit: The maximum angle of attack at which the airplane stabilizes with the high incidence protection system operating and the longitudinal control held on its aft stop.
- V_{min}: The minimum steady flight speed in the airplane configuration under consideration with the high incidence protection system operating. See section 3 Part I of these special conditions.
- $V_{min}1g$: V_{min} corrected to 1g conditions. See section 3 of Part I of these special conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{min}.

2. Capability and Reliability of the High Incidence Protection System

The capability and reliability of the high incidence protection system can be established by flight test, simulation, and analysis as appropriate. The capability and reliability required are as follows:

1. It must not be possible during pilot-induced maneuvers to encounter a stall, and handling characteristics must be acceptable, as required by section 5 of Part I of these special conditions.

2. The airplane must be protected against stalling due to the effects of wind-shears and gusts at low speeds as required by section 6 of Part I of these special conditions.

3. The ability of the high incidence protection system to accommodate any reduction in stalling incidence must be verified in icing conditions.

4. The high incidence protection system must be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures.

5. The reliability of the system and the effects of failures must be acceptable in accordance with § 25.1309.

3. Minimum Steady Flight Speed and Reference Stall Speed

In lieu of § 25.103, we propose the following requirements:

(a) The minimum steady flight speed, V_{min}, is the final stabilized calibrated airspeed obtained when the airplane is decelerated until the longitudinal control is on its stop in such a way that the entry rate does not exceed 1 knot per second.

(b) The minimum steady flight speed, V_{min}, must be determined in icing and non-icing conditions with:

(1) The high incidence protection system operating normally;

(2) Idle thrust and automatic thrust system (if applicable) inhibited;

(3) All combinations of flap settings and landing gear position for which V_{min} is required to be determined;

(4) The weight used when reference stall speed, V_{SR}, is being used as a factor to determine compliance with a required performance standard;

(5) The most unfavorable center of gravity allowable; and

(6) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(c) The 1-g minimum steady flight speed, $V_{min}1g$, is the minimum calibrated airspeed at which the airplane can develop a lift force (normal to the flight path) equal to its weight, while at an angle of attack not greater than that at which the minimum steady flight speed of subparagraph (a) was determined. It must be determined in icing and non-icing conditions.

(d) The reference stall speed, V_{SR}, is a calibrated airspeed defined by the applicant. V_{SR} may not be less than a 1g stall speed. V_{SR} must be determined in non-icing conditions and expressed as:

$$V_{SR} \geq \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

where—

V_{CLmax} = Calibrated airspeed obtained when the load factor-corrected lift coefficient ($\frac{n_{zw}W}{qS}$) is first a maximum during the maneuver prescribed in paragraph (e)(8) below.

N_{zw} = Load factor normal to the flight path at V_{CLmax}

W = Airplane gross weight;

S = Aerodynamic reference wing area; and

q = Dynamic pressure.

(e) V_{CLmax} is determined in non-icing conditions with:

(1) Engines idling, or, if that resultant thrust causes an appreciable decrease in stall speed, not more than zero thrust at the stall speed;

(2) The airplane in other respects (such as flaps and landing gear) in the condition existing in the test or performance standard in which V_{SR} is being used;

(3) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard;

(4) The center of gravity position that results in the highest value of reference stall speed;

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}; and

(6) The high incidence protection system adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system.

(7) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed 1 knot per second.

4. Stall Warning

In lieu of § 25.207, we propose the following requirements:

4.1 Normal Operation

If the capabilities of the high incidence protection system are met, then the conditions of section 2, ''Capability and Reliability of the High Incidence Protection System,'' are satisfied. These conditions provide safety equivalent to § 25.207, *Stall warning,* so the provision of an additional, unique warning device is not required.

4.2 High Incidence Protection System Failure

Following failures of the high incidence protection system, not shown to be extremely improbable, such that the capability of the system no longer satisfies items (a), (b), and (c) of section 2, ''Capability and Reliability of the High Incidence Protection System,'' stall warning must be provided and must protect against encountering unacceptable stall characteristics and against encountering stall.

(a) Stall warning with the flaps and landing gear in any normal position must be clear and distinctive to the pilot and meet the requirements specified in paragraphs (d) and (e) below.

(b) Stall warning must also be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures.

(c) The warning may be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) above and for the conditions prescribed in paragraphs (d) and (e) below.

(d) In non-icing conditions stall warning must provide sufficient margin to prevent encountering unacceptable stall characteristics and encountering stall in the following conditions:

(1) In power off straight deceleration not exceeding 1 knot per second to a speed 5 knots or 5 percent calibrated airspeed, whichever is greater, below the warning onset.

(2) In turning flight stall deceleration at entry rates up to 3 knots per second when recovery is initiated not less than 1 second after the warning onset.

(e) In icing conditions stall warning must provide sufficient margin to prevent encountering unacceptable characteristics and encountering stall, in power-off straight and turning flight decelerations not exceeding 1 knot per second, when the pilot starts a recovery maneuver not less than three seconds after the onset of stall warning.

(f) An airplane is considered stalled when the behavior of the airplane gives the pilot a clear and distinctive indication of an acceptable nature that the airplane is stalled. Acceptable

indications of a stall, occurring either individually or in combination are:

(1) A nose-down pitch that cannot be readily arrested;

(2) Buffeting, of a magnitude and severity that is strong and effective deterrent to further speed reduction; or

(3) The pitch control reaches the aft stop and no further increase in pitch attitude occurs when the control is held full aft for a short time before recovery is initiated.

(g) An aircraft exhibits unacceptable characteristics during straight or turning flight decelerations if it is not always possible to produce and to correct roll and yaw by unreversed use of aileron and rudder controls, or abnormal nose-up pitching occurs.

5. Handling Characteristics at High Incidence

In lieu of both §§ 25.201 and 25.203, we propose the following requirements:

5.1 High Incidence Handling Demonstration

In lieu of § 25.201:

(a) Maneuvers to the limit of the longitudinal control, in the nose-up pitch, must be demonstrated in straight flight and in 30° banked turns with:

(1) The high incidence protection system operating normally;

(2) Initial power conditions of:

i. Power off; and

ii. The power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the reference stall speed with flaps in approach position, the landing gear retracted, and maximum landing weight;

(3) Flaps, landing gear, and deceleration devices in any likely combination of positions;

(4) Representative weights within the range for which certification is requested; and

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(b) The following procedures must be used to show compliance in non-icing and icing conditions:

(1) Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed 1 knot per second until the control reaches the stop;

(2) The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques;

(3) Maneuvers with increased deceleration rates:

(i) In non-icing conditions, the requirements must also be met with increased rates of entry to the incidence limit, up to the maximum rate achievable; and

(ii) In icing conditions, with the anti-ice system working normally, the requirements must also be met with increased rates of entry to the incidence limit, up to 3 knots per second; and

(4) Maneuver with ice accretion prior to operation of the normal anti-ice system. With the ice accretion prior to operation of the normal anti-ice system, the requirements must also be met in deceleration at 1 knot per second up to full back stick.

5.2 Characteristics in High Incidence Maneuvers

In lieu of § 25.203:

In icing and non-icing conditions:

(a) Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30° banked turns, the airplane's characteristics must be as follows:

(1) There must not be any abnormal nose-up pitching.

(2) There must not be any uncommanded nose-down pitching, which would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at Alpha limit as the longitudinal control reaches the stop would be acceptable.

(3) There must not be any uncommanded lateral or directional motion and the pilot must retain good lateral and directional control, by conventional use of the controls, throughout the maneuver.

(4) The airplane must not exhibit buffeting of a magnitude and severity that would act as a deterrent from completing the maneuver specified in paragraph 5.1(a).

(b) In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized Alpha limit. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal control on the stop for a period of time appropriate to the maneuver.

(c) It must always be possible to reduce incidence by conventional use of the controls.

(d) The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds such as V_2 and V_{REF} up to Alpha limit must not be unduly damped or be significantly slower than can be achieved on conventionally controlled transport airplanes.

5.3 Characteristics Up to Maximum Lift Angle of Attack

Also in lieu of § 25.201:

(a) In non-icing conditions:

Maneuvers with a rate of deceleration of not more than 1 knot per second up to the angle of attack at which V_{CLmax} was obtained as defined in section 3, ''Minimum Steady Flight Speed and Reference Stall Speed,'' must be demonstrated in straight flight and in 30° banked turns in the following configurations:

(1) The high incidence protection deactivated or adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system;

(2) Automatic thrust increase system inhibited (if applicable);

(3) Engines idling;

(4) Flaps and landing gear in any likely combination of positions; and

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(b) In icing conditions:

Maneuvers with a rate of deceleration of not more than 1 knot per second up to the maximum angle of attack reached during maneuvers from paragraph 5.1(b)(3)(ii) must be demonstrated in straight flight with:

(1) The high incidence protection deactivated or adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system;

(2) Automatic thrust increase system inhibited (if applicable);

(3) Engines idling;

(4) Flaps and landing gear in any likely combination of positions, and

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(c) During the maneuvers used to show compliance with paragraphs (a) and (b) above, the airplane must not exhibit dangerous characteristics, and it must always be possible to reduce angle of attack by conventional use of the controls. The pilot must retain good lateral and directional control, by conventional use of the controls, throughout the maneuver.

6. Atmospheric Disturbances

Operation of the high incidence protection system must not adversely affect aircraft control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of wind-shear. This must be demonstrated in non-icing and icing conditions.

7. Proof of Compliance

We propose the following requirement be added in lieu of § 25.21(b), [Reserved]:

(b) The flying qualities must be evaluated at the most unfavorable center-of-gravity position.

8. Sections 25.145(a), 25.145(b)(6), and 25.1323(d)

We propose the following requirements:

• For § 25.145(a), add ''V_{min}'' in lieu of ''stall identification.''

• For § 25.145(b)(6), and ''V_{min}'' in lieu of ''V_{SW}.''

• For § 25.1323(d), add ''From 1.23 V_{SR} to V_{min} . . .,'' in lieu of, ''1.23 V_{SR} to stall warning speed . . .,'' and, ''. . . speeds below V_{min} . . .'' in lieu of, ''. . . speeds below stall warning. . . .''

Special Conditions Part II

Credit for Robust Envelope Protection in Icing Conditions

The following special conditions are in lieu of the specified paragraphs of §§ 25.103, 25.105, 25.107, 25.121, 25.123, 25.125, 25.143, and 25.207.

1. Define the stall speed as provided in these special conditions, Part I, in lieu of § 25.103.

2. We propose the following requirements in lieu of § 25.105(a)(2)(i):

In lieu of § 25.105(a)(2)(i) Takeoff:

(i) The V_2 speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the takeoff configuration, or

3. In lieu of § 25.107(c) and (g) we propose the following requirements, with additional sections (c□) and (g□):

In lieu of § 25.107(c) and (g) Takeoff speeds:

(c) In non-icing conditions V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(b) but may not be less than—

(1) V_{2MIN};

(2) V_R plus the speed increment attained (in accordance with § 25.111(c)(2)) before reaching a height of 35 feet above the takeoff surface; and

(3) A speed that provides the maneuvering capability specified in § 25.143(h).

(c□) In icing conditions with the ''takeoff ice'' accretion defined in part 25, appendix C, V_2 may not be less than—

(1) The V_2 speed determined in non-icing conditions; and

(2) A speed that provides the maneuvering capability specified in § 25.143(h).

(g) In non-icing conditions, V_{FTO}, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(c), but may not be less than—

(1) 1.18 V_{SR}; and

(2) A speed that provides the maneuvering capability specified in § 25.143(h).

(g□) In icing conditions with the ''final takeoff ice'' accretion defined in part 25, appendix C, V_{FTO}, may not be less than—

(1) The V_{FTO} speed determined in non-icing conditions.

(2) A speed that provides the maneuvering capability specified in § 25.143(h).

4. In lieu of §§ 25.121(b)(2)(ii)(A), 25.121(c)(2)(ii)(A), and 25.121(d)(2)(ii), we propose the following requirements:

In lieu of § 25.121(b)(2)(ii)(A):

(A) The V_2 speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the takeoff configuration; or

In lieu of § 25.121(c)(2)(ii)(A):

(A) The V_{FTO} speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the en-route configuration; or

In lieu of § 25.121(d)(2)(ii):

(d)(2) The requirements of subparagraph (d)(1) of this paragraph must be met:

(ii) In icing conditions with the approach ice accretion defined in appendix C, in a configuration corresponding to the normal all-engines-operating procedure in which $V_{min}1g$ for this configuration does not exceed 110% of the $V_{min}1g$ for the related all-engines-operating landing configuration in icing, with a climb speed established with normal landing procedures, but not more than 1.4 V_{SR} (V_{SR} determined in non-icing conditions).

5. In lieu of § 25.123(b)(2)(i) we propose the following requirements:

In lieu of § 25.123(b)(2)(i):

(i) The minimum en-route speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the en-route configuration, or

6. In lieu of § 25.125(b)(2)(ii)(B) and § 25.125(b)(2)(ii)(C), we propose the following requirement:

(B) A speed that provides the maneuvering capability specified in § 25.143(h) with the landing ice accretion defined in part 25, appendix C.

7. In lieu of § 25.143(j)(2)(i), we propose the following requirement:

(i) The airplane is controllable in a pull-up maneuver up to 1.5 g load factor or lower if limited by angle of attack protection; and

8. In lieu of § 25.207, Stall warning, to read as the requirements defined in these special conditions Part I, Section 4.

Issued in Renton, Washington, on August 27, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20893 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0419; Special Conditions No. 25–563–SC]

Special Conditions: Gulfstream Aerospace Corporation, Model GVI; Electro-Hydraulically Actuated Seats Equipped With a Backup Power Supply

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: These special conditions are issued for Gulfstream Aerospace Corporation Model GVI airplane. This airplane, as modified by Gulfstream Aerospace Corporation, will have novel or unusual design features associated with the installation of electro-hydraulically operated seats with a backup power supply (BPS) and hydraulic reservoir, pump, and actuators, as well as massage and heating functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 3, 2014. We must receive your comments by October 20, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0419 using any of the following methods:

• *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Jacquet, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2676; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

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

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

Background

On June 14, 2014, Gulfstream Aerospace Corporation applied for an amendment to a Supplemental Type Certificate (STC) ST04252AT–D for the installation of electro-hydraulically operated seats with novel or unusual features in the Model GVI airplane. These features include a backup power supply used to return the backrest, seat pan, and leg rest to the taxi, takeoff, and landing (TT&L) position in the event of a power failure. In addition, each seat contains a hydraulic reservoir, pump, and actuators, as well as massage and heating functions. The Model GVI is a business jet airplane powered by two Rolls-Royce Deutschland Ltd. and Company KG turbofan engines and is certified for 19 passengers and a crew of 3.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulation (14 CFR) 21.101, Gulfstream Aerospace Corporation must show that the Model GVI, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00015AT or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00015AT are as follows:

• 14 CFR part 25, *Airworthiness Standards: Transport Category Airplanes,* effective February 1, 1965, including Amendments 25–1 through 25–120 and 25–122, 25–124, and 25–132. Amendment 25–118 was not published and therefore has no applicability.

• 14 CFR part 36, *Noise Standards: Aircraft Type and Airworthiness Certification,* effective December 1, 1969, including Amendments 36–1 through 36–28.

• Compliance with Section 44715(e) of Title 49 U.S.C. (Noise Control Act of 1972).

• Optional Design Regulations:

(a) The Model GVI has been shown to comply with the requirements for ditching: §§ 25.801, 25.563, 25.807(e), and 25.1585(a). When the operating rules require emergency ditching equipment, compliance with §§ 25.1411 and 25.1415 must be shown. Gulfstream Report GVI–GER–1709, ''Design Requirements Document for Ditching Equipment,'' provides an acceptable means for showing compliance with §§ 25.1411 and 25.1415.

(b) The Model GVI is approved for flight into known icing conditions and has demonstrated compliance to § 25.1419.

• *Exemptions pertinent to these special conditions:* Exemption No. 9761, §§ 25.562(a) and 25.785(b), *Side Facing Divan.*

In addition, the certification basis includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Model GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Gulfstream Model GVI will incorporate the following novel or unusual design features: Hydraulically-actuated components on airplane seats including hydraulic reservoir, pump, and actuators, as well as massage and heating functions and backup power systems.

Discussion

Hydraulically-actuated components and backup power systems on airplane seats are considered novel or unusual by the FAA. Therefore, we developed special conditions that contain the additional standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

The FAA has considered the installation of seats with these features to have four primary safety concerns:

1. Reliability of the backup power supply;
2. Safety hazards to the occupants from the hydraulically-actuated components of the seat;
3. Structural integrity of the hydraulic components; and
4. Flammability.

Emergency exits must be accessible to the passengers and the effectiveness of evacuation must be maintained. Typical airplane seats can be manually positioned to the lateral (track) and directional (swivel) TT&L position by mechanical means, so they can be positioned in the event of a loss of cabin power. For this electro-hydraulically operated seat design, in lieu of a manual means to re-position the hydraulically operated seat features (backrest, seat pan, and leg rest deployment) for TT&L, a BPS is used to temporarily power the hydraulic system. The BPS is only intended for use in the event of a loss of cabin power. If the seats are installed in the path of the emergency over wing exits, failure to return the seat to a TT&L position may have an adverse effect on evacuation. Substantiation of 14 CFR 25.809(b) and 25.813(c)(2)(ii) must be shown with the seats in their most adverse positions.

It must be shown that the hydraulically-actuated components of the seat pose no safety hazard to the occupants or airplane. This includes injuries caused by crushing of airplane occupants who are between the hydraulically-actuated components and any part of the passenger cabin when seat features (e.g., leg rest or backrest) are actuated. Additionally, the risk of loss of function of a control or proximity switch resulting in the pump motor being commanded to stay on, after the hydraulic actuator(s) have reached their maximum/minimum limit, must not cause the overloaded motor to overheat, as it could catch fire.

The FAA has also considered the emergency landing dynamic conditions for the installation of electro-hydraulically actuated seats. The applicant must show that the hydraulic system (actuators, reservoir, lines, etc.) remains intact and free from leakage under the conditions specified in § 25.562. Testing of each seat's hydraulic system per § 25.1435(c) may be conducted off of the airplane.

Flammability of hydraulic fluid used in the seat movement mechanism must be considered. If the fluid is flammable, it could contribute to a post-crash or in-flight fire. Any failure modes that would result in release of the flammable hydraulic fluid during a post-crash or in-flight fire causing such fluid to materially increase an existing fire must be examined. Examples of this could be flex lines burning through and releasing the flammable hydraulic fluid, or the fluid reservoir could be heated in a fire resulting in a boiling liquid expanding vapor explosion. The potential for spontaneous ignition of the fluid coming into contact with hot surfaces or other ignition sources should also be addressed. The applicant should examine any possible failure mode in which the flammable hydraulic fluid could be absorbed into materials, like the seat foam/fabric, carpeting, etc. The applicant must show that any fluid-soaked seat parts are still self-extinguishing. The applicant must also show that flammability of dry residue, which may be present from a slow leak/fluid weepage, does not degrade the flammability characteristics of any materials it may come into contact with to a level below the requirements specified in § 25.853.

Applicability

As discussed above, these special conditions are applicable to STC ST04252AT–D, which modifies the Gulfstream Model GVI airplane. Should Gulfstream Aerospace Corporation apply at a later date to amend this STC to incorporate the same novel or unusual design feature, the special conditions would apply to that amended STC as well.

Conclusion

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

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the modification to the Gulfstream Model GVI airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Aerospace Corporation airplanes modified by Gulfstream Aerospace Corporation.

Electro-Hydraulically Actuated Seats Equipped With a Backup Power Supply

1. The probability of failure of the backup power supply to return seat components to the required taxi, takeoff, and landing position must be shown to be no greater than 10^{-5} per flight hour.

2. It must be shown that the hydraulically-actuated components of the seat pose no safety hazard to the occupants. Hazards to be considered per the latest revision of Advisory Circular 25.1309–1, at a minimum are:

a. Injuries caused by crushing of airplane occupants who are between the hydraulically actuated components and any part of the passenger cabin when the leg rest or backrest is actuated.

b. The risk of loss of function of a control or proximity switch resulting in the pump motor being commanded to stay on after the hydraulic actuator(s) have reached their maximum/minimum limit, creating potential for overheat or fire.

c. The potential for a significant contribution to a fire in the event fluid comes into contact with hot surfaces or other ignition sources, and the potential for release of toxic or flammable vapors/gasses.

3. It must be shown that the hydraulic system (actuators, reservoir, lines, etc.) remains intact and free from leakage under the conditions specified in § 25.562. Testing of each seat's hydraulic system per § 25.1435(c) may be conducted off of the airplane.

4. Section 25.863 requires consideration of any effects the fluid, including the fluid as a dry residue, could have on combustible or absorbing materials. The characteristics of the flammable fluid in these conditions must be tested to the requirements of § 25.853(a) and (c), or the materials must be shielded in a manner that prevents contact by the fluid. However, as an alternative to such testing or shielding, the applicant may provide, in accordance with § 25.863(c), a quick-acting means that alerts the crew that the fluid has leaked.

Issued in Renton, Washington, on August 26, 2014.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20865 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0766; Directorate Identifier 2013–NE–26–AD; Amendment 39–17961; AD 2014–17–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) PT6A–114 and PT6A–114A turboprop engines. This AD requires initial and repetitive borescope inspection (BSI) of compressor turbine (CT) blades, and the removal from service of blades that fail inspection. This AD was prompted by several incidents of CT blade failure, causing power loss, and engine failure. We are issuing this AD to prevent failure of CT blades, which could result in damage to the engine and damage to the airplane.

DATES: This AD becomes effective October 8, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2014.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: *www.pwc.ca.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2013–0766; 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 Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7154; fax: 781–238–7199; email: *robert.c.morlath@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The SNPRM was published in the **Federal Register** on May 12, 2014 (79 FR 26901). The SNPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been a number of reported incidents where Compressor Turbine (CT) blade failures have caused power loss on PT6A–114 & PT6A–114A engines, resulting in in-flight shutdown (IFSD). Investigation by engine manufacturer Pratt & Whitney Canada (P&WC) has determined that when operated at high power and high temperature settings, the subject CT blades are prone to crack/fracture as a result of creep and/or sulfidation.
>
> P&WC issued Service Bulletin (SB) 1669 that introduces a newly designed CT blade which has proven to be far less affected by the blade ''Creep'' phenomenon. Additionally, to help prevent IFSD by identifying pending creep induced blade failure of the pre-SB 1669 configuration blades, P&WC has revised SB 1669 to include specific inspection/maintenance requirements for engines with pre-SB 1669 configuration CT blade installation.
>
> An engine power loss or IFSD on a single engine powered aeroplane such as Cessna 208 could result in an unsafe condition. AD CF–2013–21 was issued on 1 August 2013 to mandate compliance with SB 1669R9 requirements to inspect and replace the existing CT blades on PT6A–114 & PT6A–114A engines with a new type of post SB 1669 configuration CT blades. P&WC, through SB 1727, has now introduced a new version of the post SB 1669 configuration CT blade that features a tighter tolerance on the platform width. This enhances the ability of the maintainer to achieve the required inter-platform gap.

Comments

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

Request To Remove Mandatory Upgrade

One commenter requested that we remove the mandatory terminating action requirement to install P&WC single crystal CT blades, part numbers (P/Ns) 3072791–01 and 3072791–02. The commenter states that mandating the installation of an unproven replacement CT blade is not prudent and could be costly. The post-SB blade has a questionable operating history including failure. This blade has been identified for removal in the PT6A–34 and –36 engines, so it should not be made mandatory for installation in the PT6A–114 engine.

We do not agree. P&WC single crystal CT blades, P/Ns 3072791–01 and 3072791–02, are proven replacement CT blades for the PT6A–114 and PT6A–114A engines. These single crystal CT blades have successfully performed over 2 million flight hours in service and have displayed a lower rate of failure than older CT blade designs. An ongoing investigation into blade failures on other PT6A series engines has shown that the root cause of those failures does not impact the PT6A–114 and PT6A–114A fleets. Therefore, P&WC single crystal CT blades, P/Ns 3072791–01 and 3072791–02, have not been identified for removal from the PT6A–114 and PT6A–114A series engines. We did not change this AD.

Request To Change Mandatory Terminating Action

One commenter suggested that the 36-month compliance time for the mandatory terminating action is not appropriate. The commenter states that mandating replacement of the complete set of single crystal CT blades with P/N 3072791–02 blades within 36 months is an undue cost burden for certain operators and that the availability of CT blade, P/N 3072791–02, is unreliable. The operator will not reach the next scheduled hot section interval prior to 36 months, thereby causing the performance of the next hot section inspection (HSI) sooner than necessary.

We do not agree. The 36-month compliance time for installing single crystal CT blades, P/Ns 3072791–01 and 3072791–02, adequately addresses the unsafe condition without imposing undue burden on operators. P&WC single crystal CT blades, P/Ns 3072791–01 and 3072791–02 are currently available from P&WC both as replacement parts and installed in new production engines. We did not change this AD.

Request To Change Mandatory Terminating Action

Hawkins Aero Engineering, Inc. (Hawkins Aero) requested that the mandatory terminating action be changed to allow for installation of CT

blade P/Ns approved by the FAA in the future. The reason for this request is that P&WC and various parts manufacturer approval companies may develop new blade designs. Adding language that would allow for installation of newly approved blades in the future would avoid having to revise this AD.

We do not agree. We cannot approve P/Ns that do not exist. We did not change this AD.

Request To Change Referenced SB and P/N

One commenter requested that we remove P&WC SB No. PT6A–72–1669 and CT blade, P/N 3072791–01, from this AD. The commenter states that this SB introduces CT blade, P/N 3072791–01, which is no longer available. The commenter suggests that in this AD, to avoid confusion when an operator reviews engine repair records to determine SB compliance, we should mention only P&WC SB No. PT6A–72–1727, which introduces single crystal CT blade, P/N 3072791–02.

We partially agree. We agree that referencing P&WC SB No. PT6A–72–1669 in this AD may introduce some confusion as to what P/Ns are mandated for installation.

We disagree with removing all references to P&WC SB No. PT6A–72–1669 from this AD because this SB contains instructions on performing the optional metallurgical examination cited in paragraph (e)(1)(iii)(B) of this AD.

We disagree with removing all references to single crystal CT blade, P/N 3072791–01, because it is still acceptable for installation even though it is no longer in production.

We made the following change to the Credit for Previous Actions paragraph of this AD: ''If you performed a metallurgical examination of single crystal CT blades in accordance with P&WC SB No. PT6A–72–1669, Revision 9, dated June 28, 2013, or earlier versions, you met the initial inspection requirements of paragraph (e)(1)(i) of this AD. However, you must still comply with the repetitive BSI requirement of paragraph (e)(1)(ii) of this AD.''

Request To Change the Number of Stated Fatalities

Hawkins Aero requested that we re-evaluate the stated number of fatalities that have been associated with CT blade failures. Hawkins Aero then provided a brief synopsis of recent fatal incidents involving CT blade failures and associated forced landings that provide a different number than what was published in the SNPRM (79 FR 26901, May 12, 2014).

We partially agree. We agree that we should be accurate in what we report. We disagree that we must identify fatalities to demonstrate the need for the AD. We changed the justification statement in the Summary and Unsafe Condition paragraphs to state that ''This AD was prompted by several incidents of CT blade failure, causing power loss, and engine failure.''

Request To Change the Costs of Compliance

One commenter requested that we re-evaluate the costs of compliance. The commenter states that the cost of performing the HSI, other than the cost of the blades, was not considered. The commenter also indicated that the hidden cost of installing the post-SB blades has not been revealed. The replacement single crystal CT blades have a hard time life limit of 10,000 hours, whereas the CT blades that are being replaced do not. The post-SB blades have a lower stretch inspection interval of 4,000 hours compared to 5,000 for pre-SB blades.

We do not agree. The cost of compliance calculation includes the initial work and parts costs associated with removing the unsafe condition. It does not include costs associated with normal scheduled maintenance. We did not change this AD.

Request To Approve Alternate Methods of Compliance (AMOCs)

Hawkins Aero requested that we approve AMOCs to this AD.

We do not agree. This AD sets forth our required method of compliance to correct the specified unsafe condition. Operators may request AMOCs to this AD using the procedures below. We did not change this AD.

Request To Change Nomenclature

Hawkins Aero requested that each time we reference the single crystal CT blades in this AD we use the nomenclature ''P&WC single crystal CT blade P/N's 3072791–01 and 3072791–02.'' The commenter states that ''In several locations within the SNPRM the FAA has referred to: 'single crystal CT blades P/Ns 3072791–01 or 3072791–02,' 'CT blades, part numbers P/Ns 3072791–01 or 3072791–02,' and 'P&WC single crystal CT blades P/Ns 3072791–01 or 3072791–02'.''

We agree. We changed this AD by replacing all references to the single crystal CT blades with the nomenclature ''P&WC single crystal CT blades, P/Ns 3072791–01 and 3072791–02.''

Request To Clarify Compliance Language

One commenter requested that we clarify the language in paragraph (e)(1)(iii)(A) of this AD with a specific P/N.

We do not agree. Operators may install any P/N single crystal CT blade eligible for installation. We did not change this AD.

Request To Clarify Assumptions

One commenter requested that we re-evaluate the 1,800 hour assumption for a typical hot section interval. The commenter states, ''Assuming that 1,800 hours is the normal interval for all operators is incorrect; some operators have extended intervals up to and including On Condition; therefore, stating to perform the AD at next HSI could be much longer than the expected 1,800 hours.''

We do not agree. We did not assume 1,800 hours as a typical HSI interval. This AD requires blade examination or replacement at next HSI, and not at specific flight-hour or cycles-in-operation intervals, precisely due to the wide variety of approved inspection intervals that exist for these engines. We did not change this AD.

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 300 engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 hours per engine to perform the required inspection and 8 hours to replace the blades. The average labor rate is $85 per hour. Required parts cost about $59,334 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $18,106,200, if all blades are replaced.

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):

2014–17–08 Pratt & Whitney Canada Corp.: Amendment 39–17961; Docket No. FAA–2013–0766; Directorate Identifier 2013–NE–26–AD.

(a) Effective Date

This AD becomes effective October 8, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Canada Corp. (P&WC) PT6A–114 and PT6A–114A turboprop engines.

(d) Unsafe Condition

This AD was prompted by several incidents of compressor turbine (CT) blade failure, causing power loss, and engine failure. We are issuing this AD to prevent failure of CT blades, which could lead to damage to the engine and damage to the airplane.

(e) Compliance

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

(1) For engines that have CT blades installed other than P&WC single crystal CT blades, part numbers (P/Ns) 3072791–01 or 3072791–02, perform the following actions:

(i) Within 150 operating hours after the effective date of this AD, perform a borescope inspection (BSI) of CT blades for engines with 500 or more hours time-since-new that have not been previously inspected or time-since-last-inspection (TSLI).

(ii) Thereafter, repeat the inspection in paragraph (e)(1)(i) of this AD within 500 flight hours TSLI.

(iii) During the next hot section inspection (HSI) after the effective date of this AD, and each HSI thereafter, replace the complete set of CT blades with any of the following:

(A) New CT blades;

(B) CT blades that have passed a two-blade metallurgical examination in accordance with paragraph 3.B., Accomplishment Instructions, of P&WC Service Bulletin (SB) No. PT6A–72–1669, Revision 9, dated June 28, 2013; or

(C) P&WC single crystal CT blades, P/Ns 3072791–01 or 3072791–02.

(2) Reserved.

(f) Mandatory Terminating Action

Within 36 months after the effective date of this AD, replace the complete set of CT blades with P&WC single crystal CT blades, P/Ns 3072791–01 or 3072791–02.

(g) Credit for Previous Action

If you performed a metallurgical examination of single crystal CT blades before the effective date of this AD in accordance with P&WC SB No. PT6A–72–1669, Revision 8, dated January 17, 2013, or earlier versions, all of which are not incorporated by reference, you have met the initial inspection requirements of paragraph (e)(1)(i) of this AD. However, you must still comply with the repetitive BSI requirement of paragraph (e)(1)(ii) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Robert Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7154; fax: 781–238–7199; email: *robert.c.morlath@faa.gov.*

(2) Refer to Transport Canada Civil Aviation AD CF–2013–21R1, dated November 13, 2013, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0766-0008.*

(j) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Canada Service Bulletin No. PT6A–72–1669, Revision 9, dated June 28, 2013.

(ii) Reserved.

(3) For P&WC service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Internet: *www.pwc.ca.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, 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 August18, 2014.

Richard P. Warren,

Acting Assistant Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–20453 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0137; Directorate Identifier 2013–NM–135–AD; Amendment 39–17960; AD 2014–17–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes; Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This AD was prompted by reports of rupture of the uplock springs of the nose landing gear (NLG) and main landing gear (MLG) doors and legs. This AD requires repetitive inspections of the uplock springs of the NLG and MLG doors and legs for broken and damaged springs, and corrective actions if necessary. We are issuing this AD to detect and correct improper free fall extension of the MLG or NLG, which could lead to possible loss of control of the airplane on the ground, and consequent damage to the airplane and injury to occupants.

DATES: This AD becomes effective October 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 8, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0137;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes; Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The NPRM published in the **Federal Register** on March 7, 2014 (79 FR 13003).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0150, dated July 16, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes; Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The MCAI states:

> Some cases of Nose Landing Gear (NLG) and Main Landing Gear (MLG) Door and Leg Uplock spring ruptures on A300, A310 or A300–600 aeroplanes have been reported in service.
>
> Springs within the uplock are used to either lock the gear or the door in the up position, or to participate in emergency mechanical unlocking.
>
> The springs are positioned in pairs, and in case of rupture of one spring the other one remains to fulfill the function, whereas the rupture of both springs will disable the locking function or the emergency unlocking function.
>
> This condition, if not detected and corrected, could prevent proper free fall extension of the MLG or NLG, possibly leading to loss of control of the aeroplane on the ground, consequently resulting in damage to the aeroplane and injury to occupants.
>
> For the reason described above, this [EASA] AD requires [repetitive] detailed visual inspection[s] of the NLG and MLG Door and Leg Uplock springs [for broken and damaged springs] and, depending of findings, their replacement.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0137-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 13003, March 7, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this

recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 13003, March 7, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 13003, March 7, 2014).

We also 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 156 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive inspections ...	1 work-hour × $85 per hour = $85 per inspection.	$0	$85 per inspection	$13,260 per inspection.

In addition, we estimate that any necessary replacement would take about 9 work-hours for a cost of $765 per product. The cost of parts is minimal. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0137;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–17–07 Airbus: Amendment 39–17960. Docket No. FAA–2014–0137; Directorate Identifier 2013–NM–135–AD.

(a) Effective Date

This AD becomes effective October 8, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) of this AD; certificated in any category; all serial numbers.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(5) Model A300 C4–605R Variant F airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of rupture of the uplock springs of the nose landing gear (NLG) and main landing gear (MLG) doors and legs. We are issuing this AD to detect and correct improper free fall extension of the MLG or NLG, which could lead to possible loss of control of the airplane on the ground, and consequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Repetitive Inspections

Within 18 months after the effective date of this AD: Perform a detailed inspection of the uplock springs of the MLG and NLG legs and doors for broken and damaged springs, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. Repeat the inspection thereafter at intervals not to exceed 18 months.

(1) Airbus Service Bulletin A300–32–0465, Revision 01, dated April 25, 2013 (for Model A300 series airplanes).

(2) Airbus Service Bulletin A300–32–6111, Revision 01, dated April 25, 2013 (for Model A300–600 series airplanes).

(3) Airbus Service Bulletin A310–32–2147, Revision 01, dated April 25, 2013 (for Model A310 series airplanes).

(h) Corrective Actions

The corrective actions required by paragraphs (h)(1), (h)(2), and (h)(3) of this AD do not constitute terminating actions for the repetitive inspections required by paragraph (g) of this AD.

(1) If, during any inspection required by paragraph (g) of this AD, one spring on the MLG or NLG door uplock is found broken or damaged, within 2 months after the inspection, replace the affected MLG or NLG door uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(2) If, during any inspection required by paragraph (g) of this AD, one spring on the MLG or NLG leg uplock is found broken or damaged, repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 50 flight cycles. Replacement of any affected leg uplock, as required by paragraph (h)(2)(i) or (h)(2)(ii) of this AD, as applicable, constitutes terminating action for the repetitive inspections required by paragraph (h)(2) of this AD.

(i) If, during any inspection required by paragraph (h)(2) of this AD, the second free fall spring on the MLG or NLG leg uplock is found broken or damaged, before further flight, replace the affected MLG or NLG leg uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(ii) Within 1,000 flight cycles after doing the inspection required by paragraph (g) of this AD during which the spring has been found broken, replace the affected MLG or NLG leg uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(3) If, during any inspection required by paragraph (g) of this AD, two free fall springs on the same MLG or NLG leg uplock are found broken or damaged, before further flight, replace the affected MLG or NLG leg uplock, as applicable, with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(i) Credit for Previous Actions

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

(1) Airbus Service Bulletin A300–32–0465, dated July 20, 2012, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A300–32–6111, dated July 20, 2012, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A310–32–2147, dated July 20, 2012, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0150, dated July 16, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0137-0002.*

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

(l) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A300–32–0465, Revision 01, dated April 25, 2013.

(ii) Airbus Service Bulletin A300–32–6111, Revision 01, dated April 25, 2013.

(iii) Airbus Service Bulletin A310–32–2147, Revision 01, dated April 25, 2013.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 15, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20259 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0617; Directorate Identifier 2014–CE–019–AD; Amendment 39–17962; AD 2014–17–09

RIN 2120–AA64

Airworthiness Directives; Various de Havilland Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Harry E. Williams de Havilland Model DH 82A airplanes, all Cliff Robertson de Havilland Model DH 82A airplanes, and all de Havilland Model DH 83 airplanes. This AD requires inspecting the aircraft maintenance records and/or the installed lateral fuselage tie rods and

attaching nuts to determine the origin of manufacture. This AD also requires immediately replacing lateral fuselage tie rods and attaching nuts produced by a specific manufacturer. This AD was prompted by reports of structural failure of the attachment of the wing to the fuselage that resulted from failed lateral fuselage tie rods. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective September 18, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 18, 2014.

We must receive comments on this AD by October 20, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, for de Havilland DH 82A airplanes, contact de Havilland Support Ltd., Building 213, Duxford Airfield, Cambridge, United Kingdom CB22 4QR, telephone: +44 (0) 1223 830090; fax: +44 (0) 1223 83008; email: *info@dhsupport.com,* Internet: *http://www.dhsupport.com/moth.php.*

For service information identified in this AD, for de Havilland DH 83, contact Air Stratus Ltd., Oaksey Park Airfield, Oaksey, Malmesbury, Wiltshite, United Kingdom SN 16 9SD, telephone: +44 (0) 1666 575111; no known Internet address.

You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0617; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: For airplanes covered under Type Certificate Data Sheet (TCDS) A5PC (Model de Havilland DH 82A airplanes built in Australia): Andrew McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

For airplanes covered under TCDS A8EU (Model de Havilland DH 82A airplanes built in the United Kingdom): Fred Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Suite 100, Lakewood, California 90712; phone (562) 627–5232; fax: (562) 627–5210; email: *fred.guerin@faa.gov.*

For airplanes covered under TCDS 2–439 (Model de Havilland DH 83 airplanes built in the United Kingdom): Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report from the Australia Transportation Safety Board (ASTB) of accident investigation results on a de Havilland Model DH 82A airplane, which had a wing failure in flight. Investigation revealed that both of the accident airplane's fuselage lateral tie rods, which join the lower wings to the fuselage, were found fractured in three of the four threaded sections near the join with the left wing. The failed lateral fuselage tie rods, part number JRA–776–1, were under an Australian parts manufacturing approval (PMA) and were found to have different characteristics than the OEM parts.

Although the defective PMA parts were manufactured in Australia, some airplanes of U.S. registry may have the PMA parts installed.

De Havilland Model DH 82A airplanes (commonly referred to as Tiger Moths) are type certificated under two type certificates. TCDS A5PC, currently held by Harry E. Williams, is for airplanes built in Australia, and TCDS A8EU, currently held by Cliff Robertson, c/o Gadbois Business Management, is for airplanes built in the United Kingdom. This type certification approval was not by validation, but by an acceptance process; as such, the U.S. type certificate holders are not the manufacturers of the airplanes and the original manufacturers (de Havilland and its licensees) are not type certificate holders.

De Havilland Support Ltd (DHSL) holds the type certificate responsibility for de Havilland Model DH 82A airplanes (the type design for TCDS A8EU) in the United Kingdom.

DHSL is custodian of the airframe design data, manufacturing drawings, and repair schemes still in existence for de Havilland Model DH 82A Tiger Moth series airplanes only. In 2012, DHSL entered into a CAA Type Responsibility Agreement (TRA) so that the airplane remains eligible, if required, for an ICAO-compliant Certificate of Airworthiness to facilitate training and pleasure flying.

Similarly, Air Stratus Ltd holds the type certificate responsibility for de Havilland Model DH 83 airplanes (the type design for TCDS 2–439) in the United Kingdom.

The process for making mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country mandatory for airplanes of U.S. registry is through rulemaking.

This condition, if not corrected, could result in structural failure of the attachment of the wing to the fuselage. We are issuing this AD to correct the unsafe condition on these products.

Relevant Service Information

We reviewed British Aerospace Military Aircraft and Aerostructures BAe Aircraft Bulletin for de Havilland Moth Aircraft, Document Type and Ref No Technical News Sheet CT (Moth) No 29, Issue 3, dated March 1, 1999, which was approved by the Civil Aviation Authority (CAA) for the United Kingdom to ensure the continued airworthiness of these airplanes in the United Kingdom. The service information describes procedures for replacing the lateral tie rods and attaching nuts.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires inspecting the aircraft maintenance records and/or the installed lateral fuselage tie rods and attaching nuts to determine if they were produced by J & R Aerospace Pty Ltd. This AD also requires replacing all lateral fuselage tie rods and attaching nuts produced by J & R Aerospace Pty Ltd with airworthy parts.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because structural failure of the attachment of the wing to the fuselage could result in loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2014–0617 and Directorate Identifier 2014–CE–019–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 69 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the aircraft maintenance records and/or the lateral fuselage tie rod s and attaching nuts to determine the lateral fuselage tie rods and attaching nuts origin of manufacture.	1 work-hour × $85 per hour = $85.	Not applicable	$85	$5,865

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace lateral fuselage tie rods and attaching nuts	30 work-hours × $85 per hour = $2,550.	$825	$3,375

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–17–09 Harry E. Williams, Cliff Robertson, and de Havilland Airplanes: Amendment 39–17962; Docket No.

FAA–2014–0617; Directorate Identifier 2019–CE–019–AD.

(a) Effective Date

This AD is effective September 18, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Harry E. Williams and Cliff Robertson Model de Havilland DH 82A airplanes, all serial numbers, and de Havilland Model DH 83 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 5341, Fuselage, Wing Attach Fittings.

(e) Unsafe Condition

This AD was prompted by reports of structural failure of the attachment of the wing to the fuselage that resulted from failed lateral fuselage tie rods. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified in paragraphs (g) through (j) of this AD, unless already done.

(g) Restrict Airplane Operation

(1) As of September 18, 2014 (the effective date of this AD), the airplane is restricted to non-aerobatic flight until the actions required in paragraphs (h)(1) through (i)(1) of this AD are done.

(2) As of September 18, 2014 (the effective date of this AD), before further flight, place a copy of this AD into the Limitations section of the airplane flight manual (AFM).

(h) Determine Manufacture of Installed Lateral Fuselage Tie Rods and Attaching Nuts

Within the next 10 hours time-in-service (TIS) after September 18, 2014 (the effective date of this AD), review the aircraft maintenance records and/or inspect the installed lateral fuselage tie rods and attaching nuts to determine if the lateral fuselage tie rods and attaching nuts were produced by J & R Aerospace Pty Ltd., P/N JRA–776–1 (for de Havilland Model DH 82A airplanes), and P/N JRA–776–3 (for de Havilland Model DH 83 airplanes).

(1) If you are able to positively determine that the installed lateral fuselage tie rods and attaching nuts are not produced by J & R Aerospace Pty Ltd, remove the flight restriction required in paragraph (g) of this AD, and no further action is required by this AD.

(2) If you are not able to positively determine that the installed lateral fuselage tie rods and attaching nuts are not produced by J & R Aerospace Pty Ltd or if you determine that the installed lateral fuselage tie rods and attaching nuts are produced by J & R Aerospace, before further flight, remove and replace the lateral fuselage tie rods and attaching nuts as specified in paragraph (i) of this AD.

(i) Remove and Replace Lateral Fuselage Tie Rods and Attaching Nuts Produced by J & R Aerospace Pty Ltd

(1) Before further flight after making the determination required in paragraph (h)(2) of this AD, remove and destroy the installed lateral fuselage tie rods and attaching nuts and replace the lateral fuselage tie rods and attaching nuts. Replace the lateral tie rods and attaching nuts following the procedures in paragraph 2.C. of the Accomplishment Instructions and using the table on Figure 1 in British Aerospace Military Aircraft and Aerostructures BAe Aircraft Bulletin for De Havilland Moth Aircraft, Document Type and Ref No Technical News Sheet CT (Moth) No 29, Issue 3, dated March 1, 1999.

(2) Before further flight after doing the replacement required in paragraph (i)(1) of this AD, remove the flight restriction required in paragraph (g) of this AD.

(j) Prohibited Installation

As of September 18, 2014 (the effective date of this AD), do not install P/N JRA–776–1 or JRA–776–3 lateral fuselage tie rods manufactured under Australian part manufacture approval (PMA) manufacturer J & R Aerospace Pty Ltd.

(k) Special Flight Permit

Special flight permits are permitted with the following limitations:

(1) No passengers,

(2) Day VRF only,

(3) Straight and level flight, and

(4) Avoid areas of known turbulence.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager of the Fort Worth Airplane Certification Office (ACO), the Manager of the Los Angeles Aircraft Certification Office (ACO), and the Manager of the Standards Office, FAA, have the authority to approve AMOCs for their respective products covered by this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the applicable FAA office, send it to the attention of the person identified in paragraph (n).

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

(m) Related Information

(1) For more information about this AD for airplanes covered under TCDS A5PC (Model de Havilland DH 82A airplanes built in Australia), contact Andrew McAnaul, Aerospace Engineer, FAA, Fort Worth ACO, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(2) For more information about this AD for airplanes covered under TCDS A8EU (Model de Havilland DH 82A airplanes built in the United Kingdom), contact Fred Guerin, Aerospace Engineer, FAA, Los Angeles ACO, 3960 Paramount Blvd., Suite 100, Lakewood, California 90712; phone (562) 627–5232; fax: (562) 627–5210; email: *fred.guerin@faa.gov.*

(3) For more information about this AD for airplanes covered under TCDS 2–439 (Model de Havilland DH 83 airplanes built in the United Kingdom), contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov*

(n) Material Incorporated by Reference

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

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

(i) British Aerospace Military Aircraft and Aerostructures BAe Aircraft Bulletin for De Havilland Moth Aircraft, Document Type and Ref No Technical News Sheet CT (Moth) No 29, Issue 3, dated March 1, 1999.

(ii) Reserved.

(3) For British Aerospace Military Aircraft and Aerostructures BAe Aircraft Bulletin for De Havilland Moth Aircraft, Technical New Sheet CT (Moth) No 29, Issue 3, dated March 1, 1999, service information identified in this AD, contact:

(i) For de Havilland DH 82A airplanes: de Havilland Support Ltd, Building 213, Duxford Airfield, Cambridge, United Kingdom CB22 4QR, telephone: +44 (0) 1223 830090; fax: +44 (0) 1223 83008; email: *info@dhsupport.com,* Internet: *http://www.dhsupport.com/moth.php.*

(ii) For de Havilland DH 83 airplanes: Air Stratus Ltd., Oaksey Park Airfield, Oaksey, Malmesbury, Wiltshite, United Kingdom SN 16 9SD, telephone: +44 (0) 1666 575111; no known Internet address.

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64016. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on August 19, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20241 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0190; Directorate Identifier 2012–NM–188–AD; Amendment 39–17959; AD 2014–17–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–17–08 for all Airbus Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes. AD 2011–17–08 required revising the maintenance program by incorporating certain Airworthiness Limitation Items (ALIs). This new AD requires a revision to the maintenance or inspection program, as applicable, to incorporate new or revised structural inspection requirements. This AD was prompted by a revision of certain airworthiness limitations items (ALI) documents, which specifies more restrictive instructions and/or airworthiness limitations. We are issuing this AD to detect and correct fatigue cracking, damage, and corrosion in certain structure, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective October 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 8, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 30, 2011 (76 FR 53303, August 26, 2011).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0190;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011), which superseded AD 2006–09–07, Amendment 39–14577 (71 FR 25919, May 3, 2006). AD 2011–17–08 applied to all Airbus Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes. The NPRM published in the **Federal Register** on April 8, 2014 (79 FR 19294). The NPRM was prompted by a revision of certain airworthiness limitations items (ALI) documents, which specifies more restrictive instructions and/or airworthiness limitations. The NPRM proposed to require revising the maintenance program by incorporating certain ALIs. We are issuing this AD to detect and correct fatigue cracking, damage, and corrosion in certain structure, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0211, dated October 12, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, and Model A330–300 series airplanes. The MCAI states:

> The airworthiness limitations are currently defined and published in the Airbus A330 Airworthiness Limitations Section (ALS).
>
> The airworthiness limitations applicable to the Damage Tolerant Airworthiness Limitation Items (DT ALI) are currently specified in Airbus A330 ALI, Airbus Document reference AI/SE–M4/95A.0089/97, which is approved by EASA and referenced in Airbus ALS Part 2.
>
> Issue 19 of the Airbus A330 ALI Document introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with the relevant instructions could result in an unsafe condition.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2010–0174 [*http://ad.easa.europa.eu/blob/easa_ad_2010_0174_superseded.pdf/AD_2010–0174_1*] [which corresponds to FAA AD 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011)], which is superseded, and requires the implementation of the new or more restrictive maintenance instructions and/or airworthiness limitations as specified in Airbus A330 ALI Document reference AI/SE–M4/95A.0089/97 issue 19.

The unsafe condition is fatigue cracking, damage, and corrosion in certain structure, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0190-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 19294, April 8, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a

manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA design organization approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 19294, April 8, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 19294, April 8, 2014).

We also 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 30 airplanes of U.S. registry.

The actions that are required by AD 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011), and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2011–17–08 is $85 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,550, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0190;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011), and adding the following new AD:

2014–17–06 Airbus: Amendment 39–17959. Docket No. FAA–2014–0190; Directorate Identifier 2012–NM–188–AD.

(a) Effective Date

This AD becomes effective October 8, 2014.

(b) Affected ADs

This AD replaces AD 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011).

(c) Applicability

This AD applies to Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic inspections.

(e) Reason

This AD was prompted by a revision of certain airworthiness limitations items (ALI)

documents, which specifies more restrictive instructions and/or airworthiness limitations. We are issuing this AD to detect and correct fatigue cracking, damage, and corrosion in certain structure, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance Program Revision

This paragraph restates the requirements of paragraph (h) of AD 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011), with no changes. Within 3 months after September 30, 2011 (the effective date of this AD 2011–17–08): Revise the maintenance program by incorporating Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 17, dated May 28, 2010. At the times specified in Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 17, dated May 28, 2010, comply with all applicable maintenance requirements and associated airworthiness limitations included in Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 17, dated May 28, 2010.

(h) Retained Requirement: No Alternative Intervals or Limits

This paragraph restates the requirements of paragraph (i) of AD 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011), with no changes. Except as provided by paragraphs (i) and (k)(1) of this AD, after accomplishing the actions specified in paragraph (g) of this AD, no alternatives to the maintenance tasks, intervals, or limitations specified in paragraph (g) of this AD may be used.

(i) New Maintenance or Inspection Program Revision

(1) Within 3 months after the effective date of this AD: Revise the maintenance or inspection program, as applicable, by incorporating Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 19, dated March 23, 2012; ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation reference 0GVLG120018/C0S, dated October 24, 2012; and ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation reference 0GVLG130002/C01, dated March 26, 2013.

(2) Comply with all applicable instructions and airworthiness limitations included in Airbus Document AI/SE M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 19, dated March 23, 2012; ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation reference 0GVLG120018/C0S, dated October 24, 2012; and ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation reference 0GVLG130002/C01, dated March 26, 2013. The initial compliance times for the actions specified Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 19, dated March 23, 2012; ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation reference 0GVLG120018/C0S, dated October 24, 2012; and ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' 0GVLG130002/C01, dated March 26, 2013; are at the times specified in Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 19, dated March 23, 2012; ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation ref. 0GVLG120018/C0S, dated October 24, 2012; and ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation ref. 0GVLG130002/C01, dated March 26, 2013; or within 3 months after the effective date of this AD, whichever occurs later. Accomplishing the revision in this paragraph ends the requirements in paragraph (g) of this AD.

(j) New Optional Compliance

Compliance with tasks 533021–02–01, 533021–02–02, and 533021–02–03, specified in ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation ref. 0GVLG120022/C0S, dated December 21, 2012, may be used as a method of compliance to tasks 533021–01–01, 533021–01–02, 533021–01–03 specified in Section 2.2.1 and 2.2.2 of Section 2, ''Airworthiness Limitations,'' of Airbus Document AI/SE M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 19, dated March 23, 2012.

(k) New Requirement: No Alternative Intervals or Limits

Except as provided by paragraph (j) of this AD, after the maintenance or inspection program, as applicable, has been revised as required by paragraph (i) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) under the provisions of paragraph (l)(1) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously for AD 2011–17–08, Amendment 39–16772 (76 FR 53303, August 26, 2011), are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

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

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0211, dated October 12, 2012, for related information. You may examine the MCAI in the AD docket on the Internet at http://*www.regulations.gov/#!documentDetail;D=FAA-2014-0190-0002.*

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR October 8, 2014.

(i) Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 19, dated March 23, 2012.

(ii) ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation ref. 0GVLG120018/C0S, dated October 24, 2012.

(iii) ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation ref. 0GVLG120022/C0S, dated December 21, 2012.

(iv) ''Variation to Issue 19 of ALI Document (referenced in ALS Part 2) Damage Tolerant Airworthiness Limitation Items (DT ALI),'' variation ref. 0GVLG130002/C01, dated March 26, 2013.

(4) The following service information was approved for IBR on September 30, 2011 (76 FR 53303, August 26, 2011).

(i) Airbus Document AI/SE–M4/95A.0089/97, ''A330 Airworthiness Limitation Items,'' Issue 17, dated May 28, 2010.

(ii) Reserved.

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

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 15, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20258 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0061; Directorate Identifier 2013–NM–029–AD; Amendment 39–17949; AD 2014–16–25]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2007–06–12 for certain Airbus Model A330–200 and A330–300 airplanes. This new AD reduces the compliance times for reinforcing the structure of the center fuselage. This AD was prompted by a new fatigue and damage tolerance evaluation that revealed the compliance time for an existing reinforcement of the fuselage has to be reduced. We are issuing this AD to prevent fatigue cracking of the fuselage, which could result in reduced structural integrity of the fuselage.

DATES: This AD becomes effective October 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 8, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0061;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007). AD 2007–06–12 applied to certain Airbus Model A330–200 and A330–300 airplanes. The NPRM published in the **Federal Register** on February 27, 2014 (79 FR 11016).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0016, dated January 16, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200 and A330–300 airplanes. The MCAI states:

> During the fatigue tests (EF2) of the Airbus A330 test fuselage, initiation and development of cracks were evidenced at the circumferential joint of frame 53.3.
>
> This condition, if not corrected, could lead to a reduction in the structural integrity of the fuselage.
>
> EASA issued AD 2006–0266 [(*http://ad.easa.europa.eu/blob/easa_ad_2006_0266_Superseded.pdf/AD_2006–0266_1*), which corresponds to FAA AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007)], which took over the requirements of Direction Générale de L'aviation Civile [DGAC] France AD F–2003–415 for A330–300 pre-mod 41652S11819, and required reinforcement of the circumferential joint of frame 53.3 by application of Airbus Service Bulletin (SB) A330–53–3143 on A330–300 post modification 41652S11819 and pre-mod 49202, and all A330–200 pre-mod 49202 in order to improve the fatigue life.
>
> Since that [EASA] AD was issued, in the frame of a new fatigue and damage tolerance evaluation taking into account the aeroplane utilisation, the thresholds for the reinforcement were reassessed and the conclusion is that some thresholds must be reduced.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2006–0266, which is superseded, and requires reinforcement of structure of the centre fuselage at the upper circumferential joint of frame 53.3 within the new thresholds.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0061-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 11016, February 27, 2014) or on the determination of the cost to the public.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 11016, February 27, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (79 FR 11016, February 27, 2014) about these proposed changes. However, a comment was provided for an NPRM

having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013). The commenter stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''DAH with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 11016, February 27, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 11016, February 27, 2014).

We also 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 9 airplanes of U.S. registry.

We estimate that it will take about 327 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $17,850 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be up to $410,805, or up to $45,645 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0061;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007), and adding the following new AD:

2014–16–25 Airbus: Amendment 39–17949. Docket No. FAA–2014–0061; Directorate Identifier 2013–NM–029–AD.

(a) Effective Date

This AD becomes effective October 8, 2014.

(b) Affected ADs

This AD replaces AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007).

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, and –243 airplanes; and Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category, except those on which Airbus Modification 49202 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a new fatigue and damage tolerance evaluation that concluded the compliance time for an existing reinforcement of the fuselage has to be reduced. We are issuing this AD to prevent fatigue cracking of the fuselage, which could result in reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Installation for Model A330–300 Series Airplanes

For Airbus Model A330–301, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes, except those on which Airbus Modification 41652S11819 has been incorporated in production: At the time specified in paragraph (g)(1) or (g)(2) of this AD, whichever occurs later, install butt straps at FR53.3 on the fuselage skin between left-hand (LH) and right-hand (RH) stringer (STR) 13, and do all related investigative and corrective actions before further flight. Except as provided by paragraph (h) of this AD, do all actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3127, Revision 02, including Appendix 01, dated December 7, 2011.

(1) At the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) For airplanes with a short-range mission as specified in Airbus Service Bulletin A330–53–3127, Revision 02, including Appendix 01, dated December 7, 2011: Within 15,300 flight cycles or 46,100 flight hours, whichever occurs first, after the first flight of the airplane.

(ii) For airplanes with a long-range mission as specified in Airbus Service Bulletin A330–53–3127, Revision 02, including Appendix 01, dated December 7, 2011: Within 13,200 flight cycles or 79,300 flight hours, whichever occurs first after the first flight of the airplane.

(2) Within 24 months after the effective date of this AD, but not to exceed 14,700 total flight cycles or 51,400 total flight hours, whichever occurs earlier.

(h) Corrective Actions

For Airbus Model A330–301, –321, –322, –323, –341, –342, and –343 airplanes, except those on which Airbus Modification 41652S11819 has been incorporated in production: If any crack is detected during the related investigative actions (rototest) required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Installation for Model A330–200 and –300 Series Airplanes

For airplanes specified in paragraph (c) of this AD on which Airbus Modification 41652S11819 has been embodied in production: At the time specified in paragraph (i)(1) or (i)(2) of this AD, whichever occurs later, install butt straps at FR53.3 on the fuselage skin between LH and RH STR13; and do all related investigative and other specified actions before further flight, as applicable. Do all actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–53–3143, Revision 05, dated May 29, 2012, including Appendix 1; except, if any crack is detected during a related investigative action (rototest), before further flight, repair the crack using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(1) At the applicable times specified in the ''threshold'' column of the table in 1.E. ''Compliance'' of Airbus Service Bulletin A330–53–3143, Revision 05, including Appendix 01, dated May 29, 2012. Where paragraph 1.E. ''Compliance'' of Airbus Service Bulletin A330–53–3143, Revision 05, dated May 29, 2012, specifies a time in the ''threshold'' column, this AD requires compliance within the corresponding times after the first flight of the airplane.

(2) Within 24 months after the effective date of this AD, but not to exceed 17,600 total flight cycles or 61,600 total flight hours, whichever occurs earlier.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–53–3127, Revision 01, including Appendix 01, dated November 21, 2003, which was incorporated by reference in AD 2005–20–07, Amendment 39–14300 (70 FR 57732, October 4, 2005).

(2) This paragraph provides credit for actions required by paragraph (i) of this AD if those actions were performed before the effective date of this AD using any service information specified in paragraphs (j)(2)(i) through (j)(2)(v) of this AD.

(i) Airbus Service Bulletin A330–53–3143, including Appendix 01, dated December 24, 2004, which is not incorporated by reference in this AD.

(ii) Airbus Service Bulletin A330–53–3143, Revision 01, including Appendix 01, dated June 29, 2006, which was incorporated by reference in AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007).

(iii) Airbus Service Bulletin A330–53–3143, Revision 02, including Appendix 01, dated August 31, 2010, which is not incorporated by reference in this AD.

(iv) Airbus Service Bulletin A330–53–3143, Revision 03, including Appendix 01, dated March 3, 2011, which is not incorporated by reference in this AD.

(v) Airbus Service Bulletin A330–53–3143, Revision 04, including Appendix 01, dated December 6, 2011, which is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested

using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously for AD 2007–06–12, Amendment 39–14993 (72 FR 12555, March 16, 2007), are approved as AMOCs for the corresponding provisions of paragraph (i) of this AD.

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

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0016, dated January 16, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0061-0002.*

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

(m) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A330–53–3127, Revision 02, dated December 7, 2011, including Appendix 01.

(ii) Airbus Service Bulletin A330–53–3143, Revision 05, dated May 29, 2012, including Appendix 01.

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

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 7, 2014.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–19725 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0794; Directorate Identifier 2012–NM–157–AD; Amendment 39–17936; AD 2014–16–12]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 2000EX airplanes. This AD was prompted by a revision to the airplane airworthiness limitations to introduce a corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. This AD requires revising the maintenance or inspection program to include the maintenance tasks and airworthiness limitations specified in the airworthiness limitations section of the airplane maintenance manual. We are issuing this AD to prevent reduced structural integrity of the airplane.

DATES: This AD becomes effective October 8, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0794;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on September 25, 2013 (78 FR 58973).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0157, dated August 23, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations and maintenance requirements for the Falcon 2000EX type design are included in Dassault Aviation Falcon 2000EX (F2000EX) Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). EASA issued AD 2008–0221 [*http://ad.easa.europa.eu/ad/2008-0221.pdf]* to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Aviation F2000EX AMM chapter 5–40 at revision 3.
>
> Since that [EASA] AD was issued, Dassault Aviation issued F2000EX AMM chapter 5–40 at revision 7, which introduces new or more restrictive maintenance requirements and/or airworthiness limitations.
>
> Dassault Aviation AMM chapter 5–40 revision 7 contains among other changes the following requirements:
>
> —Inspection and test of horizontal stabilizer jackscrew;
>
> —Test of various components of the electrical power system;
>
> —Revised Time Between Overhaul for screwjack of flap actuators -3 version;
>
> —Revised interval for checking the screw/nut play on screwjack of flap actuators -3 version;

—Removal of service life limit for screwjack of flap actuators;
—Test of flap asymmetry protection system. F2000EX AMM chapter 5–40 at revision 7 introduces extended inspection interval;
—Tests of the auto brake system;
— Inspection procedures of fuselage and wings;
— Check of overpressure tightness on pressurization control regulating valves. Compliance with this check is required by EASA AD 2008–0072 [*http://ad.easa.europa.eu/ad/2008-0072.pdf*]. F2000EX AMM chapter 5–40 at revision 7 introduces extended inspection interval.

The maintenance tasks and airworthiness limitations, as specified in the F2000EX AMM chapter 5–40, have been identified as mandatory actions for continued airworthiness of the F2000EX type design. Failure to comply with AMM chapter 5–40 at revision 7 might constitute an unsafe condition.

For the reasons described above, this [EASA] AD requires the implementation of the maintenance tasks and airworthiness limitations, as specified in Dassault Aviation F2000EX AMM chapter 5–40 at revision 7.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0794-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 58973, September 25, 2013) and the FAA's response to each comment.

Request To Withdraw the NPRM (78 FR 58973, September 25, 2013)

An anonymous commenter stated that Dassault Aviation has taken appropriate steps to ensure that operators have sufficient knowledge and awareness of the corrosion prevention control program and that the maintenance manual includes the requirements of the proposed AD (78 FR 58973, September 25, 2013). The commenter declared that all operators are likely including the actions in the proposed AD into their maintenance programs, even though the actions are not mandated by an AD. The commenter also stated that '' . . . any structural inspection of moderate detail already highlights specific critical areas (like the stabilizer actuator) so yet another avenue to enforce inspections of this nature is ludicrous.'' We infer that the commenter is requesting that the NPRM be withdrawn.

We do not agree to withdraw the NPRM (78 FR 58973, September 25, 2013). Although an airplane manufacturer's maintenance manual includes corrosion control inspections, with appropriate approval, operators are allowed to deviate from those procedures for their maintenance programs. This AD addresses the unsafe condition related to uncontrolled corrosion by requiring operators to include the manufacturer's maintenance procedures in the operators' maintenance program. No change has been made to this AD regarding this issue.

Request To Revise the NPRM (78 FR 58973, September 25, 2013) Based on New Service Information

Dassault requested the NPRM (78 FR 58973, September 25, 2013) be revised to refer to Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 9, dated February 2013, of the Dassault Falcon 2000EX Maintenance Manual.

We agree with the commenter's request and have updated paragraph (g) of this AD accordingly. We have also included a new paragraph (j) in this AD to give credit for the actions required by paragraph (g) of this AD, if those actions were done before the effective date of this AD using Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 8, dated July 2012, of the Dassault Falcon 2000EX Maintenance Manual. We have redesignated subsequent paragraphs accordingly.

Request To Remove the Terminating Action

Dassault commented that paragraph (h) of the proposed AD (78 FR 58973, September 25, 2013) was ''not suited.'' Paragraph (h) of the proposed AD stated that ''Accomplishing paragraph (g) of this AD terminates the requirements of paragraph (g) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for Dassault Aviation Model FALCON 2000EX Airplanes.'' Paragraph (g) of the proposed AD proposed to require revising the maintenance or inspection program by incorporating the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 8, dated July 2012, of the Dassault Falcon 2000EX Maintenance Manual. The commenter stated that the repetitive inspection interval of 1,640 flight hours was the same in the service information referenced in the NPRM and in FAA AD 2010–26–05. We infer that the commenter is requesting that paragraph (h) of the proposed AD be removed because it is unnecessary.

We do not agree that paragraph (h) of the proposed AD (78 FR 58973, September 25, 2013) should be omitted from this AD. We are providing relief for operators of Dassault Aviation Model FALCON 2000EX airplanes by allowing them to terminate the actions required by paragraph (g) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), and instead doing the actions required by paragraph (g) of this AD. If we did not include paragraph (h) in this AD, operators of Dassault Aviation Model FALCON 2000EX airplanes would have to show compliance with both paragraph (g) of AD 2010–26–05 and paragraph (g) of this AD. Paragraph (h) of this AD removes that redundancy. No change has been made to this AD in this regard.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, EASA, or Dassault Aviation's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA

directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 58973, September 25, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 58973, September 25, 2013).

Costs of Compliance

We estimate that this AD affects 18 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance/inspection program revision	1 work-hour × $85 per hour = $85	N/A	$85	$1,530

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0794;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2014–16–12 Dassault Aviation: Amendment 39–17936. Docket No. FAA–2013–0794; Directorate Identifier 2012–NM–157–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 8, 2014.

(b) Affected ADs

Certain requirements of this AD terminate the requirements of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for the airplanes identified in paragraph (c) of this AD.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 2000EX airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision to the airplane airworthiness limitations to introduce the corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 9, dated February 2013, of the Dassault Falcon 2000EX Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 9, dated February 2013, of the Dassault Falcon 2000EX Maintenance Manual, is within the times specified in that maintenance manual, or 30 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''landings'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''flight hours'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''flight cycles'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) For task number 52–20–00–610–801–01 52–205 the initial compliance time is within 24 months after the effective date of this AD.

(h) Terminating Action for the Affected AD

Accomplishing the actions specified in paragraph (g) of this AD terminates the requirements of paragraph (g) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for Dassault Aviation Model FALCON 2000EX airplanes.

(i) No Alternative Actions and Intervals

After accomplishment of the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 8, dated July 2012, of the Dassault Falcon 2000EX Maintenance Manual.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0157, dated August 23, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0794-0002.*

(m) Material Incorporated by Reference

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

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

(i) Chapter 5–40, Airworthiness Limitations, DGT 113877, Revision 9, dated February 2013, of the Dassault Falcon 2000EX Maintenance Manual.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on August 1, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–19020 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0978; Directorate Identifier 2013–NM–120–AD; Amendment 39–17958; AD 2014–17–05]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767–400ER series airplanes. This AD was prompted by reports of turbine wheel bursts in the air driven pump (ADP) turbine gearbox assembly (TGA), which resulted in the release of high energy fragments. This AD requires replacing the existing ADP TGA with an improved ADP TGA. We are issuing this AD to prevent fragments from an uncontained turbine wheel burst penetrating the fuselage and striking passengers, or penetrating the wing-to-body fairing and striking ground handling or maintenance personnel, causing serious injury.

DATES: This AD is effective October 8, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 8, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for

and locating Docket No. FAA–2013–0978; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6468; fax: 425–917–6190; email: *kenneth.frey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767–400ER series airplanes. The NPRM published in the **Federal Register** on December 6, 2013 (78 FR 73460). The NPRM was prompted by reports of turbine wheel bursts in the ADP TGA, which resulted in the release of high energy fragments. The NPRM proposed to require replacing the existing ADP TGA with an improved ADP TGA. We are issuing this AD to prevent fragments from an uncontained turbine wheel burst penetrating the fuselage and striking passengers, or penetrating the wing-to-body fairing and striking ground handling or maintenance personnel, causing serious injury.

Revised Service Information

In Note 1 to paragraph (g) of the NPRM (78 FR 73460, December 6, 2013), we referred to Fairchild Controls Service Bulletin N012000000–29–03, Revision 2, dated January 29, 2013, as a source of guidance information for modifying an existing ADP TGA. Since the NPRM was published, Fairchild Controls has published Fairchild Controls Service Bulletin N012000000–29–03, Revision 3, dated March 7, 2014. We have revised Note 1 to paragraph (g) of this final rule to refer to Fairchild Controls Service Bulletin N012000000–29–03, Revision 3, dated March 7, 2014.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal (78 FR 73460, December 6, 2013) and the FAA's response to the comment.

Request to Clarify Compliance Time

Boeing commented that the compliance time in paragraph (i) of the proposed NPRM (78 FR 73460, December 6, 2013) was confusing and requested clarification. Boeing stated that the compliance time in Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013, is 36 months after the release date of that service bulletin, which was May 29, 2013. Boeing asked if the NPRM's compliance time was also 36 months after that service bulletin's release date, or if it was 36 months after the effective date of the final rule. Boeing suggested that paragraph (i) of the proposed NPRM be revised to state ''36 months after the effective date of the AD.''

We agree to clarify the compliance time. Paragraph (i) of this AD explains that where Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD. Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013, specifies a compliance time of ''within 36 months after the original issue date of this service bulletin.'' Therefore, the compliance time for accomplishing the replacement required by this AD is within 36 months after the effective date of this AD. No change was made to this final rule regarding this issue.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 73460, December 6, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 73460, December 6, 2013).

Costs of Compliance

We estimate that this AD affects 37 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators.
Replacement	7 work-hours × $85 per hour = $595.	$114,705	$115,300	$4,266,100

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–17–05 The Boeing Company: Amendment 39–17958; Docket No. FAA–2013–0978; Directorate Identifier 2013–NM–120–AD.

(a) Effective Date

This AD is effective October 8, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–400ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Unsafe Condition

This AD was prompted by reports of turbine wheel bursts in the air driven pump (ADP) turbine gearbox assembly (TGA), which resulted in the release of high energy fragments. We are issuing this AD to prevent fragments from an uncontained turbine wheel burst penetrating the fuselage and striking passengers, or penetrating the wing-to-body fairing and striking ground handling or maintenance personnel, causing serious injury.

(f) Compliance

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

(g) Replacement of Turbine Gearbox Assembly

Except as required by paragraph (i) of this AD: At the time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013, replace the existing ADP TGA having part number N012000000 or N012000000–1 with an improved ADP TGA having part number N012000000–2 or N012000000–3, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013.

Note 1 to paragraph (g) of this AD: Guidance on modifying an existing ADP TGA so it can be re-identified as part number N012000000–2 or N012000000–3 can be found in Fairchild Controls Service Bulletin N012000000–29–03, Revision 3, dated March 7, 2014.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install an ADP TGA having part number N012000000 or N012000000–1 on any airplane.

(i) Exception to Service Information Specifications

Where Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(k) Related Information

For more information about this AD, contact Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6468; fax: 425–917–6190; email: *kenneth.frey@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 767–29–0113, dated May 29, 2013.

(ii) Reserved.

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

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington on August 15, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20213 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0994; Airspace Docket No. 13–ASW–29]

Establishment of Class E Airspace; Albuquerque, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Albuquerque VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Albuquerque, NM, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Albuquerque Air Route Traffic Control Center (ARTCC). This improves the safety and management of IFR operations within the National Airspace System.

DATES: Effective date, 0901 UTC, November 13, 2014. The Director of the Federal Register approves this incorporation by reference action under

1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9X, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

On December 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Albuquerque, NM, (78 FR 78300). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from the National Business Aviation Association in support of the recommended change.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, at the Albuquerque VORTAC navigation aid, Albuquerque, NM, to accommodate IFR aircraft under control of Albuquerque Air Route Traffic Control Center (ARTCC) by vectoring aircraft from en route airspace to terminal areas. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at the Albuquerque, NM, VORTAC navigation aid, Albuquerque, NM.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ASW NM E6 Albuquerque, NM [New]

Albuquerque VORTAC, NM
(Lat. 35°02′38″ N., long. 106°48′59″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 35°41′00″ N., long. 109°38′30″ W.; to lat. 35°51′00″ N., long. 109°19′00″ W.; to lat. 36°02′00″ N., long. 108°13′00″ W.; to lat. 36°12′00″ N., long. 107°28′00″ W.; to lat. 36°37′37″ N., long. 106°21′00″ W.; to lat. 36°43′00″ N., long. 106°05′00″ W.; to lat. 36°43′00″ N., long. 105°20′30″ W.; to lat. 35°12′30″ N., long. 105°28′30″ W.; to lat. 35°00′00″ N., long. 105°04′00″ W.; to lat. 35°00′00″ N., long. 104°33′00″ W.; to lat. 34°43′00″ N., long. 104°33′00″ W.; to lat. 34°30′00″ N., long. 105°09′00″ W.; to lat. 34°08′45″ N., long. 105°09′00″ W.; to lat. 33°58′00″ N., long. 105°27′00″ W.; to lat. 34°17′00″ N., long. 105°51′00″ W.; to lat. 34°17′00″ N., long. 106°04′00″ W.; to lat. 33°44′45″ N., long. 106°04′00″ W.; to lat. 33°49′30″ N., long. 106°16′30″ W.; to lat. 33°49′45″ N., long. 106°45′20″ W.; to lat. 33°35′00″ N., long. 106°48′10″ W.; to lat. 33°35′00″ N., long. 107°36′00″ W.; to lat. 33°50′00″ N., long. 108°00′00″ W.; to lat. 34°00′00″ N., long. 108°00′00″ W.; to lat. 34°21′00″ N., long. 108°00′00″ W.; to lat. 34°25′27″ N., long. 109°08′37″ W.; to lat. 34°17′28″ N., long. 109°17′27″ W.; to lat. 34°30′00″ N., long. 109°35′00″ W.; to lat. 34°47′52″ N., long. 110°18′52″ W., thence to the point of beginning.

Issued in Seattle, Washington, on 28 July, 2014.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–20816 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–1016; Airspace Docket No. 13–ANM–25]

Modification of Class E Airspace; Hulett, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Hulett Municipal Airport, Hulett, WY, to accommodate aircraft using the Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures. This action enhances the safety and management of aircraft operations at the airport.

DATES: Effective date, 0901 UTC, November 13, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9X, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

On January 9, 2014, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Hulett Municipal Airport, Hulett, WY (79 FR 1607). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Hulett Municipal Airport, Hulett, WY; and from 1,200 feet above the surface within prescribed parameters. This action accommodates RNAV (GPS) standard instrument approach procedures and enhances the safety and management of aircraft operations at the airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Hulett Municipal Airport, Hulett, WY.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist, that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM WY E5 Hulett, WY [Modified]

Hulett Municipal Airport, WY

(Lat. 44°39′46″ N., long. 104°34′04″ W.)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Hulett Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at lat. 44°54′00″ N., long. 105°18′00″ W.; to lat. 44°52′00″ N., long. 104°00′00″ W.; to lat. 43°56′00″ N., long. 103°37′00″ W.; to lat. 43°48′00″ N., long. 105°16′00″ W.; to lat. 44°20′00″ N., long. 105°26′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on August 18, 2014.

Christopher Ramirez,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–20812 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2014–N–1176]

Medical Devices; Hematology and Pathology Devices; Classification of Early Growth Response 1 Gene Fluorescence In-Situ Hybridization Test System for Specimen Characterization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying early growth response 1 (EGR1) gene fluorescence in-situ hybridization (FISH) test system for specimen characterization into class II (special controls). The special controls that will apply to this device are identified in this order and will be part of the codified language for the early growth response 1 (EGR1) gene fluorescence in-site hybridization (FISH) test system for specimen characterization classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective October 3, 2014. The classification was applicable July 29, 2013.

FOR FURTHER INFORMATION CONTACT: Shyam Kalavar, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5568, Silver Spring, MD 20993–0002, 301–796–6807.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

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

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on March 20, 2013, classifying the Vysis EGR1 FISH Probe Kit—SC into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or class II. On April 9, 2013, Abbott Molecular, Inc., submitted a request for classification of Vysis EGR1 FISH Probe Kit—SC under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II.

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

Therefore, on July 29, 2013, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding § 864.1870.

Following the effective date of this final classification administrative order, any firm submitting a premarket notification (510(k)) for an early growth response 1 (EGR1) gene fluorescence in-situ hybridization (FISH) test system for specimen characterization will need to comply with the special controls named in the final administrative order.

The device is assigned the generic name early growth response 1 (EGR1) gene fluorescence in-situ hybridization (FISH) test system for specimen characterization, and it is identified as a device intended to detect the EGR1 probe target on chromosome 5q in bone marrow specimens from patients with acute myeloid leukemia (AML) or myelodysplastic syndrome (MDS). The assay results are intended to be interpreted only by a qualified pathologist or cytogeneticist. These devices do not include automated systems that directly report results without review and interpretation by a qualified pathologist or cytogeneticist. These devices also do not include any device intended for use to select patient therapy, predict patient response to therapy, or to screen for disease as well as any device with a claim for a particular diagnosis, prognosis, monitoring, or risk assessment.

FDA has identified the following risks to health associated with this type of device and the measures required to mitigate these risks in table 1:

TABLE 1—IDENTIFIED RISKS AND REQUIRED MITIGATIONS

Identified risks	Required mitigations
False negative result.	Special controls (1), (2), and (3).
False positive result	Special controls (1), (2), and (3).

FDA believes that the following special controls, in addition to the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness:

1. Premarket notification submissions must also include the following information:

a. A detailed description of all probes included in the kit;

b. Purpose of each probe;

c. Probe molecular specificity;

d. Probe specificity;

e. Probe limits;

f. Probe sensitivity;

g. Specification of required ancillary reagents, instrumentation, and equipment;

h. Specification of the specimen collection, processing, storage, and slide preparation methods;

i. Specification of the assay procedure;

j. Specification of control elements that are incorporated into the recommended testing procedures;

k. Specification of risk mitigation elements: Description of all additional procedures, methods, and practices incorporated into the directions for use that mitigate risks associated with testing;

l. Specification of the criteria for test result interpretation and reporting;

m. Device analytical sensitivity data;

n. Device analytical specificity data;

o. Device reference limit data;

p. Device precision/reproducibility data;

q. Device stability data to include:

i. Real-time stability;

ii. Freeze-thaw stability;

iii. Transport and temperature stability;

iv. Post-hybridization signal stability;

v. Photostability of probe; and

r. Documentation that demonstrates the clinical validity of the device. The documentation must include data from clinical studies, a minimum of two peer-reviewed published literature references using the specific device seeking marketing clearance, or both. Documentation for the clinical studies and peer-reviewed published literature references cited must include the following elements:

i. Documentation that the sponsor's probe was used in the literature reference,

ii. Number and type of specimens,

iii. Target population studied,

iv. Upper reference limit, and

v. Range of positive probe results.

2. Your § 809.10(b)(12) (21 CFR 809.10(b)(12)) compliant labeling must include a statement summarizing the data identified in § 864.1870(b)(1)(xiii) through (b)(1)(xviii) and a description of the studies supporting the information, including the pre-specified acceptance criteria for these performance studies, justification for the pre-specified acceptance criteria, and whether the pre-specified acceptance criteria were met.

3. Your § 809.10 compliant labeling must include:

a. A warning that reads ''The assay results are intended to be interpreted only by a qualified pathologist or cytogeneticist.''

b. A warning that reads ''This device is not for high-risk uses such as selecting therapy, predicting therapeutic response or disease screening.''

c. A warning that reads ''The use of this device for diagnosis, monitoring or risk assessment has not been established.''

Early growth response 1 (EGR1) gene fluorescence in-situ hybridization (FISH) test system for specimen characterization are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device. (See section 520(e) of the FD&C Act (21 U.S.C. 360j(e)) and 21 CFR 801.109 (*Prescription devices*).). Prescription-use restrictions are a type of general control as defined in section 513(a)(1)(A)(i) of the FD&C Act.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the early growth response 1 (EGR1) gene fluorescence in-situ hybridization (FISH) test system for specimen characterization they intend to market.

II. Environmental Impact

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

III. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120 and the collections of information in 21 CFR parts 801 and 809 regarding labeling have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 864 continues to read as follows:

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

■ 2. Add § 864.1870 to subpart B to read as follows:

§ 864.1870 Early growth response 1 (EGR1) gene fluorescence in-situ hybridization (FISH) test system for specimen characterization.

(a) *Identification.* An early growth response 1 (EGR1) gene fluorescence in-situ hybridization (FISH) test system for specimen characterization is a device intended to detect the EGR1 probe target on chromosome 5q in bone marrow specimens from patients with acute myeloid leukemia (AML) or myelodysplastic syndrome (MDS). The assay results are intended to be interpreted only by a qualified pathologist or cytogeneticist. These devices do not include automated systems that directly report results without review and interpretation by a qualified pathologist or cytogeneticist.

These devices also do not include any device intended for use to select patient therapy, predict patient response to therapy, or to screen for disease as well as any device with a claim for a particular diagnosis, prognosis, monitoring, or risk assessment.

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

(1) Premarket notification submissions must also include the following information:

(i) A detailed description of all probes included in the kit;

(ii) Purpose of each probe;

(iii) Probe molecular specificity;

(iv) Probe specificity;

(v) Probe limits;

(vi) Probe sensitivity;

(vii) Specification of required ancillary reagents, instrumentation, and equipment;

(viii) Specification of the specimen collection, processing, storage and slide preparation methods;

(ix) Specification of the assay procedure;

(x) Specification of control elements that are incorporated into the recommended testing procedures;

(xi) Specification of risk mitigation elements: Description of all additional procedures, methods, and practices incorporated into the directions for use that mitigate risks associated with testing;

(xii) Specification of the criteria for test result interpretation and reporting;

(xiii) Device analytical sensitivity data;

(xiv) Device analytical specificity data;

(xv) Device reference limit data;

(xvi) Device precision/reproducibility data;

(xvii) Device stability data to include:

(A) Real-time stability,

(B) Freeze-thaw stability,

(C) Transport and temperature stability,

(D) Post-hybridization signal stability,

(E) Photostability of probe, and

(xviii) Documentation that demonstrates the clinical validity of the device. The documentation must include data from clinical studies, a minimum of two peer-reviewed published literature references using the specific device seeking marketing clearance, or both. Documentation for the clinical studies and peer-reviewed published literature references cited must include the following elements:

(A) Documentation that the sponsor's probe was used in the literature reference,

(B) Number and type of specimens,

(C) Target population studied,

(D) Upper reference limit, and

(E) Range of positive probe results.

(2) Your § 809.10(b)(12) of this chapter compliant labeling must include a statement summarizing the data identified in paragraphs (b)(1)(xiii) through (xviii) of this section and a description of the studies supporting the information, including the pre-specified acceptance criteria for these performance studies, justification for the pre-specified acceptance criteria, and whether the pre-specified acceptance criteria were met.

(3) Your § 809.10 of this chapter compliant labeling must include:

(i) A warning that reads ''The assay results are intended to be interpreted only by a qualified pathologist or cytogeneticist.''

(ii) A warning that reads ''This device is not for high-risk uses such as selecting therapy, predicting therapeutic response or disease screening.''

(iii) A warning that reads ''The use of this device for diagnosis, monitoring or risk assessment has not been established.''

Dated: August 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–20882 Filed 9–2–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 8858]

RIN 1400–AD47

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates—Visa and Citizenship Services Fee Changes; Correction

AGENCY: Department of State.

ACTION: Interim final rule; correction.

SUMMARY: The Department of State published a **Federal Register** document on August 28, 2014, in Volume 79, No. 167, page 51247, amending the Schedule of Fees for Consular Services (Schedule) for certain nonimmigrant visa application processing fees, certain immigrant visa application processing and special visa services fees, and certain citizenship services fees. The document contained an incorrect effective date. This document corrects the document by changing the effective date that the new fees will go into effect from September 6, 2014 to September 12, 2014 and the date that comments must be received by from October 21, 2014 to October 26, 2014.

DATES: The interim rule published on August 28, 2014 (79 FR 51247), becomes effective September 12, 2104. Written comments must be received on or before October 26, 2014.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- *Visit the Regulations.gov Web site at: http://www.regulations.gov* and search the RIN 1400–AD47 or docket number DOS–2014–0016.
- *Mail (paper, disk, or CD–ROM):* U.S. Department of State, Office of the Comptroller, Bureau of Consular Affairs (CA/C), SA–17 8th Floor, Washington, DC 20522–1707.
- *E-Mail: fees@state.gov.* You must include the RIN (1400–AD47) in the subject line of your message.
- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Celeste Scott, Special Assistant, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202–485–6681, telefax: 202–485–6826; Email: *fees@state.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 2014, in Volume 79, No. 167, page 51247, in the **DATES** section of the document it states the dates the new fees become effective is September 6, 2014, and written comments must be received on or before October 21, 2014. The correct date new fees become effective is September 12, 2014, and written comments must be received on or before October 26, 2014.

Correction

In FR Doc 2014–20516, appearing on page 51247 in the **Federal Register** of August 28, 2014 (79 FR 51247), in the third column, the effective date and comment period end date are corrected in the **DATES** section of this document.

Dated: August 28, 2014.

Patrick Kennedy,

Under Secretary of State for Management, Department of State.

[FR Doc. 2014–21045 Filed 9–2–14; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 73

[Docket No. TTB–2014–0004; T.D. TTB–119A; Re: T.D. TTB–119]

RIN 1513–AB97

Electronic Submission of Forms, the Finished Products Records for Distilled Spirits Plants, and Closures on Certain Distilled Spirits Products; Correction

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Direct final rule; Treasury decision; Correction.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently published a direct final rule amending its regulations regarding the electronic submission of forms and other documents. Among other provisions, those amendments added a new section providing that any requirement in the TTB regulations to submit a form to another agency may be met by the electronic submission of the form to the other agency, as long as that agency provides for and authorizes the electronic submission of the form. This final rule corrects those recent amendments by amending the definition of the term ''form'' to encompass all documents required by the TTB regulations to be submitted to any other agency, as well as to TTB, and by inserting a cross reference to that definition in the new section on the electronic submission of forms to other agencies.

DATES: Effective September 3, 2014.

FOR FURTHER INFORMATION CONTACT: Michael D. Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, at 202–453–1039, ext. 135.

SUPPLEMENTARY INFORMATION:

Recent Amendments to 27 CFR Part 73

The electronic submission of forms to the Alcohol and Tobacco Tax and Trade Bureau (TTB) is governed by the regulations in 27 CFR Part 73, Electronic Signatures; Electronic Submission of Forms. Part 73 sets forth the conditions under which TTB allows current and prospective industry members to submit forms to TTB or to other agencies electronically, and to use electronic signatures or digital signatures to sign those forms, in lieu of submitting paper documents with handwritten signatures.

When first issued in 2003, part 73 did not address the electronic submission to other agencies of forms that are required by the TTB regulations to be submitted to those agencies (see T.D. TTB–5, 68 FR 58600, October 10, 2003). To address this issue, as well as several other regulatory issues, TTB published T.D. TTB–119 in the **Federal Register** on March 27, 2014, at 79 FR 17029. The regulatory amendments made by T.D. TTB–119 became effective on April 28, 2014.

Among other regulatory changes, T.D. TTB–119 amended 27 CFR 73.1(a)(2) to state that part 73 sets forth the conditions under which TTB allows the electronic submission of certain forms to other agencies, where applicable, in addition to the conditions for the electronic submission of certain forms to TTB. To accomplish this purpose, T.D. TTB–119 added new subpart D, ''Electronic Filing of Documents with Other Agencies,'' to part 73, which consisted of one new section, § 73.40. This new section provides that any requirement in the TTB regulations to submit a form to another agency may be satisfied by submitting the form electronically to that agency, as long as the agency provides for and authorizes the electronic submission of that form and the submitter satisfies any registration or related requirement of that agency for this electronic submission.

A full discussion of the amendments made by T.D. TTB–119, including TTB's authority to issue regulations under the Internal Revenue Code of 1986, as amended (26 U.S.C.), and the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*), may be found in the preamble to that final rule.

Need for Correction of T.D. TTB–119

In part 73, the term ''form'' is defined in § 73.3 to mean ''all documents required by 27 CFR, chapter I, to be submitted to TTB.'' In T.D. TTB–119, when adding a provision allowing the electronic submission of forms required by the TTB regulations to be submitted to other agencies, TTB inadvertently neglected to amend this definition to include documents required by 27 CFR chapter I to be submitted to other agencies. Therefore, TTB is correcting the definition of the term ''form'' in § 73.3 in order to clarify that, when used in part 73, the term ''form'' includes all documents required by 27 CFR chapter I to be submitted to TTB or to any other agency. In addition, TTB is amending new § 73.40 to add a cross reference to the amended definition of ''form'' in § 73.3 in order to clarify that the provisions of § 73.40 regarding the electronic submission of forms to other agencies apply to all documents required by the TTB regulations to be submitted to other agencies, not just official TTB forms (documents issued by TTB that bear an Office of Management and Budget control number).

These corrections are merely clarifying in nature and do not change any existing regulatory or recordkeeping requirement.

Inapplicability of Prior Notice and Comment Procedures and Delayed Effective Date Requirement

TTB is issuing this final rule without prior notice and opportunity for public comment in accordance with sections 553(b)(A) and (B) of the Administrative Procedure Act (5 U.S.C. 553(b)(A) and (B)). These provisions authorize an agency to issue a rule without prior notice and comment when it issues rules of agency procedure or when an agency for good cause finds that prior notice and public comment procedures are unnecessary. Because the amendments contained in this final rule merely make technical corrections to existing procedural regulations in order to clarify the application of those provisions to documents submitted electronically to other agencies, and because these corrections do not change TTB's interpretation of any regulation or the requirements of any recordkeeping provision, TTB has determined that the 5 U.S.C. 553(b) prior notice and public comment requirement does not apply to this final rule.

Because this final rule merely makes technical corrections to existing regulations to clarify the application of those provisions to documents submitted electronically to other agencies and does not change TTB's interpretation of any regulation or the requirements of any recordkeeping provision, TTB finds good cause under 5 U.S.C. 553(d)(3) to dispense with the effective date limitation in 5 U.S.C. 553(d).

Drafting Information

Michael D. Hoover of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 73

Electronic filing, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, TTB is correcting 27 CFR chapter I, part 73 as follows:

PART 73—Electronic Signatures; Electronic Submission of Forms

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 26 U.S.C. 6011(f), 6061(b), 7502(c); 44 U.S.C. 3504 Note.

§ 73.3 [Amended]

■ 2. In § 73.3, the definition of the term ''Form(s)'' is amended by adding the words ''or any other agency'' before the period at the end of the definition.

§ 73.40 [Amended]

■ 3. In § 73.40, the first sentence is amended by adding the parenthetical phrase ''(as that term is defined in § 73.3)'' after the words ''to submit a form''.

Dated: August 25, 2014.

John J. Manfreda,

Administrator.

[FR Doc. 2014–20925 Filed 9–2–14; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0658]

RIN 1625–AA00

Safety Zone: Urban Shield 2014, South San Francisco Bay, Oakland, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of South San Francisco Bay in Oakland, CA in support of the Urban Shield maritime training exercises. This safety zone is established to ensure the safety of the exercise participants and mariners transiting the area. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on September 6 and 7, 2014. This rule will be enforced from 8 a.m. to 7 p.m. on September 6 and 7, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0658. To view documents mentioned in this preamble as being available in the docket, go to *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 rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the information about the event on July 12, 2014, and the event would occur before the rulemaking process would be completed. Law enforcement officers will be conducting maritime interdiction operations that require freedom of movement in a defined area. The safety zone is necessary to provide for the safety of the law enforcement officers participating in the training exercises as well as provide for the safety of vessels transiting near the training area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

The Alameda County Fire Department will host Urban Shield 2014 on September 6 and 7, 2014 in the navigable waters of South San Francisco Bay in Oakland, CA. The safety zone is issued to establish a temporary restricted area on the waters surrounding the training exercise. This restricted area is necessary to provide freedom of movement for law enforcement officers conducting maritime interdiction training and to ensure the safety of mariners transiting the area.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around the Urban Shield maritime training exercises. The Urban Shield 2014 Safety Zone establishes a temporary restricted area on the water within an area connecting the following points: 37°41′57″ N, 122°13′17″ W; 37°41′49″ N, 122°17′42″ W; 37°40′16″ N, 122°17′42″ W; 37°40′27″ N, 122°14′49″ W; thence back to the point of origin (NAD 83). This safety zone will be enforced from 8 a.m. until 7 p.m. on September 6 and 7, 2014. At the conclusion of the training exercises the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the training exercise. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep vessels a safe distance away from the vicinity of the training exercise to ensure the safety of law enforcement officers conducting training and other mariners transiting the area.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and

Budget has not reviewed it under those Orders.

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–652 to read as follows:

§ 165.T11–652 Safety zone; Urban Shield 2014, South San Francisco Bay, Oakland, CA.

(a) *Location.* This temporary safety zone will encompass the navigable waters of the South San Francisco Bay within an area connecting the following points: 37°41′57″ N, 122°13′17″ W; 37°41′49″ N, 122°17′42″ W; 37°40′16″ N, 122°17′42″ W; 37°40′27″ N, 122°14′49″ W; thence back to the point of origin (NAD 83), as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18651.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 8 a.m. until 7 p.m. on September 6 and 7, 2014. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in accordance with a memorandum of understanding in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: August 18, 2014.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2014–20958 Filed 9–2–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2012–0260; A–1–FRL–9915–71–Region 1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Revised State Plan for Large and Small Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Clean Air Act section 111(d)/129 State Plan revisions for Large and Small Municipal Waste Combustors (MWCs) submitted by the New Hampshire Department of Environmental Services (DES) on January 29, 2009 with amendments submitted on February 13, 2009. The revised State Plan is in response to amended emission guidelines (EGs) and new source performance standards (NSPS) for Large MWCs promulgated by EPA on May 10, 2006 and the strengthening of emission limits on Small MWCs as enacted by the New Hampshire General Court in 2005. New Hampshire DES's State Plan is for implementing and enforcing provisions at least as protective as the EPA EGs applicable to existing Large and Small MWC units.

DATES: This direct final rule will be effective November 3, 2014, unless EPA receives adverse comments by October 3, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0260 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: mcdonnell.ida@epa.gov*

3. *Fax:* (617) 918–0653.

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2012–0260,'' Ida E. McDonnell U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Ida E. McDonnell, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2012–0260. EPA's policy is that all comments received 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 information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *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 *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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the New Hampshire Department of Environmental Services, Air Resources Division, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA, 02109–0287. The telephone number is (617) 918–1287. Mr. Bird can also be reached via electronic mail at *bird.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. What Is a State Plan?
II. Why Does EPA Need To Approve State Plans?
III. Why Does EPA Regulate Air Emissions From MWCs?
IV. What History Does New Hampshire DES Have With MWC State Plans?
V. Why Did New Hampshire DES Submit a Revised MWC State Plan?
VI. What Revisions Have Been Made to the State Plan?
VII. Why Is EPA Approving New Hampshire DES's Revised State Plan?
VIII. Final Action
IX. Statutory and Executive Order Reviews

I. What is a State plan?

Clean Air Act (CAA) section 111, which Congress enacted as part of the 1970 CAA Amendments, establishes mechanisms for controlling emissions of air pollutants from stationary sources. This provision requires EPA to promulgate a list of categories of stationary sources that the Administrator, in his or her judgment, finds ''causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.'' Once EPA lists a source category, EPA must, under CAA section 111(b)(1)(B), establish ''standards of performance'' for emissions of air pollutants from new sources in the source category. These standards are known as new source performance standards (NSPS), and they are national requirements that apply directly to the sources subject to them.

When the EPA establishes NSPS for new sources in a particular source category, the EPA is also required, under CAA section 111(d)(1), to prescribe regulations for states to submit plans regulating existing sources in that source category for any air pollutant that, in general, is not regulated under the CAA section 109 requirements for the national ambient air quality standards (NAAQS) or regulated under the CAA section 112 requirements for hazardous air pollutants (HAP). In contrast with CAA section 111(b), which provides for direct federal regulation of new sources, section 111(d)'s mechanism for regulating existing sources provides that states will submit plans that establish ''standards of performance'' for the affected existing sources and that contain other measures to implement and enforce those standards.

II. Why does EPA need to approve State plans?

Under section 129 of the CAA, EGs are not federally enforceable. Section 129(b)(2) of the CAA requires states to submit state plans to EPA for approval. Each state must show that its state plan will carry out and enforce the EGs. State plans must be at least as protective as the EGs and will become federally enforceable upon EPA's approval. The procedures for adopting and submitting state plans are in 40 CFR Part 60, Subpart B.

III. Why does EPA regulate air emissions from MWCs?

When burned, municipal solid wastes emit various air pollutants, including hydrochloric acid, dioxin/furan, toxic metals (lead, cadmium, and mercury) and particulate matter. Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious human health effects, primarily to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through eating of fish. When inhaled, mercury vapor attacks the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.[1]

Exposure to particulate matter can aggravate existing respiratory and cardiovascular disease and increase risk of premature death.[2] Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.[3]

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis.[4]

IV. What history does New Hampshire DES have with MWC State plans?

On August 16, 2002, New Hampshire Department of Environmental Services (DES) submitted a CAA section 111(d)/129 State Plan for implementing and enforcing EGs for existing large and

[1] U.S. Environmental Protection Agency. *Mercury Report to Congress, Volume V: Health Effects of Mercury and Mercury Compounds* (EPA–452/R–97–007) *and Volume VI: An Ecological Assessment for Anthropogenic Mercury Emissions in the United States* (EPA–452/R–97–008). U.S. EPA Office of Air Quality, Planning, and Standards and Office of Research and Development. Washington, DC, 1997.

[2] U.S. Environmental Protection Agency. *Integrated Science Assessment for Particulate Matter* (EPA/600/R–08/139F). U.S. EPA Office of Air and Radiation. Washington, DC, 2009.

[3] U.S. Environmental Protection Agency. *Integrated Risk Information System (IRIS) on Hydrogen Chloride.* U.S EPA National Center for Environmental Assessment and Office of Research and Development. Washington, DC, 1999.

[4] U.S. Environmental Protection Agency. *Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-P-Dioxin (TCDD) and Related Compounds* (EPA/600/BP–92/001a). U.S. EPA Office of Research and Development. Washington, DC, 1994.

small municipal waste combustors (MWCs) pursuant to 40 CFR Part 60, Subpart Cb and BBBB, respectively. New Hampshire DES combined the requirements of 40 CFR Part 60, Subpart Cb and BBBB into a single plan and enforceable mechanism, New Hampshire Code of Administrative Rules Env-A 3300 *Municipal Waste Combustion* (Env-A 3300), which included the differing emissions limits for large and small MWCs.

New Hampshire DES's State Plan was analyzed by EPA. The Plan included all necessary elements of an approvable CAA section 111(d)/129 state plan, including: identification of legal authority; identification of enforceable state mechanisms for implementing plan; inventory of affected sources; inventory of emissions from affected sources; emissions limitations for affected sources; compliance schedule; and testing, monitoring, recordkeeping, and reporting requirements. EPA approved the New Hampshire DES State Plan on February 10, 2003 (68 FR 6630).

V. Why did New Hampshire DES submit a revised MWC State plan?

Section 129(a)(5) of the CAA requires EPA to conduct a 5-year review of NSPS and EGs for solid waste incinerators and amend standards and requirements as appropriate. Accordingly, EPA promulgated amended standards and requirements for Large MWCs on May 10, 2006 (71 FR 27324). This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar year basis and at least ninety percent (90%) data availability on a calendar quarter basis. The compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criteria for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;
- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations.

In addition to EPA's amended standards and requirements for Large MWCs, the New Hampshire General Court enacted more stringent emission limits for Small MWCs, codified at New Hampshire Revised Statutes Annotated 125–C:10-a, in 2005. The limits took effect January 1, 2006.

In response to the actions described above, New Hampshire DES submitted a revised State Plan to EPA on January 29, 2009. The formal submittal was accompanied by minor technical amendments submitted to EPA on February 13, 2009. EPA is taking action on the January 29, 2009 State Plan revision and the February 13, 2009 amendments in today's **Federal Register**.

VI. What revisions have been made to the State plan?

New Hampshire DES amended the emission limits for Large MWCs in Env-A 3300 to be consistent with EPA's amended EGs. Amendments to operating practices, training and certification, testing and monitoring, and reporting and recordkeeping were incorporated into Env-A 3300 by reference, as Env-A 3300 references specific citations in EPA's Large MWC EGs.

Sections of Env-A 3300 were revised to reflect name/numbering changes made to other New Hampshire DES rules cross-referenced in Env-A 3300. Instances where reference was made to Env-Wm 2705.07 and Env-Wm 3300 were changed to Env-Sw 1005.07 and Env-Sw 1600, respectively. These changes account for the name/numbering changes in the cross-referenced sections.

Env-A 3306.01 was revised to make reference to Env-A 808, *Continuous Emission Monitoring,* which has the effect of increasing the minutes of data for a valid hourly average beyond what is required in EPA's Large MWC EGs. This revision strengthens the requirements of the Plan's enforceable mechanism.

New Hampshire DES also submitted revised emission limits for Small MWCs, which are more stringent than the federal limits pursuant to 40 CFR part 60, Subpart BBBB. The New Hampshire General Court enacted the more stringent emission limits, codified at New Hampshire Revised Statutes Annotated 125–C:10–a, in 2005. The emission limits took effect January 1, 2006. New Hampshire DES submitted the more stringent emission limits as part of its revised State Plan.

New Hampshire DES's January 29, 2009 submittal did not change the NOx emission standard for mass burn rotary waterwall MWCs in Env-A 3300 as there is no such facility within the jurisdiction of New Hampshire DES that operates with this specified technology. As such, on February 13, 2009, New Hampshire DES submitted an amendment to the State Plan for MWCs, which redacted the NOx standards for mass burn rotary waterwall units in Env-A 3300.

New Hampshire DES's final revised State Plan for MWCs includes all revisions submitted on January 29, 2009 and the amendment submitted on February 13, 2009.

VII. Why is EPA approving New Hampshire DES's revised State plan?

EPA has evaluated the revised State Plan for MWCs submitted by New Hampshire DES for consistency with the CAA and EPA guidelines and policies. EPA has determined that New Hampshire DES's State Plan for Large and Small MWCs meets or exceeds all requirements and, therefore, EPA is approving New Hampshire DES's State Plan to implement and enforce the EGs, as they apply to existing Large and Small MWCs within the jurisdiction of New Hampshire DES.

EPA's approval of New Hampshire's State Plan is based on our findings that:

1. New Hampshire DES provided adequate public notice of public hearings for the proposed rulemaking that allows New Hampshire to carry out and enforce provisions that are at least as protective as the EGs for Large and Small MWCs, and;

2. New Hampshire DES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine

compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

VIII. Final Action

EPA is approving New Hampshire's revised State Plan for existing Large and Small MWCs. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective November 3, 2014 without further notice unless the Agency receives relevant adverse comments by October 3, 2014.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 3, 2014 and no further action will be taken on the proposed rule. Please note that if 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, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve 111(d)/129 plan submissions that comply with the provisions of the CAA and applicable Federal regulations. 40 CFR 62.02(a). Thus, in reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the State Plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2014. 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 today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that 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 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: July 11, 2014.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

■ 2. Section 62.7325 is amended by adding paragraph (b)(4)(i) and (ii) to read as follows:

§ 62.7325 Identification of Plan.

* * * * *

(b) * * *

(4) * * *

(i) Revised State Plan for Large and Small Municipal Waste Combustors was submitted on January 29, 2009, with a technical amendment submitted on February 13, 2009. Revisions included

amendments to New Hampshire Code of Administrative Rules Env-A 3300 *Municipal Waste Combustion* in response to amended emission guidelines for Large MWCs (40 CFR Part 60, Subpart Cb) published on May 10, 2006 and emission limits for Small MWCs enacted by the New Hampshire General Court in 2005 and codified at New Hampshire Revised Statutes Annotated 125–C:10–a.

(ii) [Reserved]

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[FR Doc. 2014–20803 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2014–0266; FRL–9916–11–Region 9]

Designation of Areas for Air Quality Planning Purposes; State of Arizona; Pinal County and Gila County; Pb

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In accordance with section 107(d)of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Hayden area, which encompasses portions of southern Gila and eastern Pinal counties, Arizona, from ''unclassifiable'' to ''nonattainment'' for the 2008 national ambient air quality standards (''NAAQS'' or ''standards'') for lead (Pb). EPA's redesignation of the Hayden area is based on recorded violations of the Pb standards at the Arizona Department of Environmental Quality's (ADEQ's) Globe Highway monitoring site, located near the towns of Hayden and Winkleman, Arizona, and additional relevant air quality information. The effect of this action will be to redesignate the Hayden area to nonattainment for the Pb standards and thereby to impose certain planning requirements on the State of Arizona to reduce Pb concentrations within the Hayden area, including, but not limited to, the requirement to submit, within 18 months of redesignation, a revision to the Arizona state implementation plan (SIP) that provides for attainment of the Pb standards as expeditiously as practicable, but no later than five years after the effective date of this redesignation.

DATES: This rule is effective on October 3, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2014–0266. 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. While 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: Ginger Vagenas, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. Background and Summary of EPA's Proposed Action
II. Response to Comments on the Proposed Rule
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background and Summary of EPA's Proposed Action

EPA revised the primary (health-based) Pb NAAQS on October 15, 2008, lowering it from the 1.5 micrograms per cubic meter (μg/m^3) level set in 1978 to a level of 0.15 μg/m^3. The secondary (welfare-based) standard was revised to be identical in all respects to the primary standard. See 73 FR 66964, November 12, 2008. An area violates the revised standards if any arithmetic 3-month mean (hereafter referred to as ''average'') concentration measured within the preceding three years is greater than 0.15 μg/m^3. EPA also expanded the Pb monitoring network by requiring new monitors to be sited near sources emitting one ton or more of Pb per year by January 1, 2010 and in certain non-source oriented locations by January 1, 2011. In a separate, later action, we revised the Pb monitoring regulations to require monitors to be sited near non-airport sources emitting 0.5 tons or more of Pb per year. See 75 FR 81126, December 27, 2010.

Section 107(d) of the Clean Air Act (CAA or ''Act'') establishes a process for making initial area designations when a NAAQS is revised. In general, states are required to submit designation recommendations to EPA within one year of promulgation of a new or revised standard and EPA is required to complete initial designations within two years of promulgation. However, if EPA has insufficient information to promulgate designations, it can extend the period for initial designations for up to one year.

On November 8, 2011, EPA completed its initial designations for the revised Pb standards.[1] Most of Arizona was designated unclassifiable/attainment for the Pb NAAQS. We designated the Hayden area, with the boundaries Arizona recommended,[2] as unclassifiable because there were available monitoring data recorded at ADEQ's Globe Highway monitoring site indicating a significant likelihood that the area was violating the 2008 Pb NAAQS, but the available information was insufficient at that time to make a nonattainment designation.[3] In our letter to Governor Brewer notifying her of our action, EPA explained that, should we subsequently determine that the Pb standards were being violated, we would initiate the process to redesignate the Hayden area to nonattainment.[4]

The CAA grants EPA the authority to change the designation of, or ''redesignate,'' areas in light of changes in circumstances. More specifically EPA has the authority under CAA section 107(d)(3) to redesignate areas (or portions thereof) on the basis of air quality data, planning and control considerations, or any other air quality-related considerations. In June 2013 we determined that quality assured, certified monitoring data collected in 2012 at the ADEQ Globe Highway monitor showed the area was violating the Pb NAAQS.[5] Accordingly, on June 12, 2013, we notified Arizona that available Pb monitoring data indicated that the air quality designation for the Hayden area should be revised to nonattainment.

Governor Brewer responded on September 25, 2013, with a

[1] See 76 FR 72097, November 22, 2011.

[2] See 40 CFR 81.303 for a legal description of the boundary of the Hayden area.

[3] Because of the form of the 2008 Pb NAAQS, one 3-month average ambient air concentration over 0.15 μg/m^3 is enough to cause a violation of the Pb NAAQS. ADEQ's Globe Highway monitor registered four violations in 2011; however, at the time of designation the data had not been quality assured and certified and therefore we did not rely on them as the basis for a nonattainment designation.

[4] Letter from Lisa P. Jackson, Administrator, U.S. EPA, to Janice K. Brewer, Governor of Arizona, dated November 8, 2011.

[5] The ADEQ Globe Highway monitor recorded three violations of the Pb NAAQS in 2012. Three-month rolling average values violated the Pb standards for February–April, March–May, and April–June 2012.

recommendation that EPA not redesignate the area to nonattainment. Governor Brewer based her recommendation on ADEQ's belief that recently installed pollution controls on the anode furnaces at the ASARCO copper smelter, which is the source of Pb emissions in the Hayden area, had reduced Pb emissions.[6]

Under section 107(d)(3) of the CAA, EPA may modify states' recommendations as it deems necessary. After reviewing the Governor's September 25, 2013 recommendation, the supporting information submitted by the State, and additional relevant, available information, EPA concluded that it would be appropriate to redesignate the Hayden area to nonattainment for the 2008 Pb NAAQS. EPA notified the Governor of its intention to modify her recommendation in a letter dated April 21, 2014.[7]

On May 2, 2014, EPA issued our proposal to redesignate the Hayden area to nonattainment for the Pb NAAQS. Our proposal was based on the monitoring data from the ADEQ Globe Highway monitor recorded between January 2010 and December 2012. We also evaluated preliminary monitoring data collected in 2013[8] from the ADEQ Globe Highway monitor and preliminary data from the network of monitors operated by ASARCO[9] that were installed and began collecting data in July and August of 2013. As shown in Table 1, ADEQ's Globe Highway monitor recorded three violations of the Pb NAAQS in 2012.[10] Two of the ASARCO monitors (the Parking Lot monitor and the Hillcrest Avenue monitor) measured values over the Pb standards in 2013. EPA evaluated the use of this set of secondary data by considering trends, gradients, and the magnitude of measured concentrations relative to the Pb standards. EPA concluded that strong trends and gradients are apparent in the preliminary data, and that preliminary data collected by two of the ASARCO monitors after the air pollution controls were installed on the anode furnaces suggest violations of the Pb standards occurred in the Hayden area in 2013. These data, along with newer data (available to date), are presented below.[11]

TABLE 1—2012, 2013, AND 2014 Pb DESIGN VALUES (DVs, μg/m³), ADEQ'S GLOBE HIGHWAY MONITOR (AQS ID 04–007–1002) AND PRELIMINARY DATA FROM ASARCO'S HILLCREST AND PARKING LOT MONITORS

3-month period	ADEQ's globe hwy monitor			ASARCO's Hillcrest monitor (preliminary)		ASARCO's parking lot monitor (preliminary)	
	2012	2013	2014 (preliminary)	2013	2014	2013	2014
Nov–Dec–Jan	0.07	0.04	0.02		0.29		1.18
Dec–Jan–Feb	0.14	0.04	0.04		0.22		0.79
Jan–Feb–Mar	0.15	0.09	0.07		0.19		0.40
Feb–Mar–Apr	0.20	0.11	**		0.13		0.25
Mar–Apr–May	0.16	0.11					
Apr–May–Jun	0.20	0.12					
May–Jun–Jul	0.15	0.11					
Jun–Jul–Aug	0.14	0.11					
Jul–Aug–Sep	0.12	0.06		0.12			
Aug–Sep–Oct	0.11	0.06		0.13		0.39	
Sept–Oct–Nov	0.09	0.04		0.19		0.65	
Oct–Nov–Dec	0.06	0.03		0.23		1.04	

* ADEQ data pulled from AQS on July 3, 2014. ADEQ's 2013 data were certified by the State on May 30, 2014.
** Not available.

For our proposal, we also reviewed and where appropriate updated our 2010 analysis of relevant factors related to establishing an appropriate nonattainment area boundary. We concluded that the existing boundary for the Hayden area should be retained.

In light of the violations of the Pb standards recorded in 2012 at ADEQ's Globe Highway monitor, and in consideration of other relevant air quality data indicating that elevated levels of Pb continue to occur within the Hayden area, EPA concluded that the SIP planning and control requirements that are triggered by redesignation of an area to nonattainment for the Pb NAAQS would be the most appropriate means to ensure that this air quality problem is remedied.

For more detailed background information concerning the 2008 Pb NAAQS and the initial designation process for the 2008 Pb NAAQS in general and the Hayden area in particular, and for an in-depth discussion of the rationale for our proposal, please see our May 2, 2014 proposed rule and the accompanying technical support document, which is included in the docket for this action.

II. Response to Comments on the Proposed Rule

EPA's May 2, 2014 proposed rule provided a 30-day public comment period. During this period, we received one comment letter from ASARCO, which opposes the redesignation. A summary of ASARCO's comments along with EPA's responses to the comments are provided below.

Comment 1: ASARCO asserted that the installation of new pollution control

[6] Governor Brewer recommended that the Hayden area not be redesignated to nonattainment ''because there have been no lead [Pb] standard violations since June 2012, when the ASARCO Hayden Copper Smelter completed the addition of controls to reduce lead emissions.'' See Letter from Janice K. Brewer, Governor of Arizona, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, dated September 25, 2013.

[7] Letter from Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, to Janice Brewer, Governor of Arizona, dated April 21, 2014.

[8] Because 2013 data had not been certified as being completely submitted and accurate at the time of our proposal, we treated it as supplemental information.

[9] The ASARCO monitors were established for multiple purposes, including comparison to the NAAQS.

[10] ADEQ's Globe Highway monitor did not record a violation of the Pb NAAQS in 2013, but in order to be in attainment of the 2008 Pb NAAQS, an area cannot measure any violations for three consecutive calendar years.

[11] The newer data show that values over the Pb standards continue to be measured at the two ASARCO monitors. However, EPA would still redesignate the area to nonattainment even in the absence of the 2014 data.

equipment (hoods that collect and route the anode furnaces' off-gas to a baghouse for particulate capture), which was completed in July of 2012, has substantially reduced ambient lead concentrations, noting that there have not been any exceedances of the Pb NAAQS at the Globe Highway monitor since July 2012.

Response: EPA commends the installation of pollution control equipment on the anode furnaces at the ASARCO facility and understands that the equipment may have resulted in a reduction of ambient Pb concentrations, as measured at the Globe Highway monitor. However, based on the form of the Pb NAAQS (i.e., three consecutive calendar years without a violation are required before an area can be considered to be attaining the standard), the monitor continues to violate the Pb NAAQS based on the monitoring data recorded prior to July 2012. In addition, the more extensive monitoring network recently installed by ASARCO suggests that the Globe Highway site is not capturing maximum ambient concentrations of Pb in the area, and that the area may be experiencing ongoing violations of the Pb NAAQS.

Comment 2: ASARCO pointed out that it is in the process of engineering a converter retrofit project and making other process improvements that will improve sulfur dioxide (SO_2) and particulate control in order to comply with the 1-hour SO_2 NAAQS attainment deadline. ASARCO asserted that these projects will reduce process fugitive emissions and further reduce ambient concentrations of Pb in the Hayden area.

Response: EPA cannot determine based on the information before us whether ASARCO's converter retrofit project, which is designed to address violations of the SO_2 NAAQS, will reduce fugitive emissions of Pb and result in an improvement in air quality with respect to Pb. ASARCO did not provide any support in its comment letter for its conclusory assertion that fugitive emissions of Pb would be reduced or attempt to quantify potential air quality benefits. Furthermore, in its converter retrofit project permit application,[12] ASARCO estimated that Pb emissions would increase by 0.49 tons per year, after taking into account reductions realized by contemporaneous projects.[13] Additional analysis, such as will be required under a Pb nonattainment designation and planning effort, will provide greater certainty regarding the impact of the current efforts on ambient concentrations of Pb and will help clarify what additional areas at the facility are contributing to the ambient concentration of Pb and whether any additional controls are needed.

Comment 3: ASARCO expressed concerns that the supplemental data EPA considered might not be appropriate for determining ambient air quality because the monitors were designed for other purposes or were not located in ambient air. ASARCO further noted that it had not evaluated the conformance of the supplemental monitoring data with 40 CFR 58.15.

Response: The ASARCO monitors were established for multiple purposes, including comparison to the NAAQS.[14] Further, EPA defines ambient air as ''that portion of the atmosphere, external to buildings, to which the general public has access.'' 40 CFR 50.1(e). The public has access to the areas where the ASARCO monitors are located and those monitors are appropriately considered to be located in ambient air. While data used as the basis for determining whether an area is violating a NAAQS must meet specific requirements contained within 40 CFR Part 58, any available monitoring data may be considered as supplementary information, regardless of monitoring intent or conformance with 40 CFR 58.15 (Annual air monitoring data certification) in order to improve our understanding of what is occurring. The data from the ASARCO monitors are provided as supplementary information and are appropriate for this purpose.

Comment 4: ASARCO observed that Arizona is required to submit a SIP by April 2015 that will show how the Hayden area will attain the SO_2 NAAQS, and questioned whether triggering the Pb nonattainment planning process by redesignating the area to nonattainment for the Pb NAAQS would result in any additional emissions reductions or faster reductions in ambient concentrations of Pb. ASARCO urged EPA to consider deferring the redesignation of the Hayden area to nonattainment as long as the Globe Highway monitor does not measure any additional exceedances of the Pb NAAQS and ASARCO and ADEQ make ''expeditious progress toward installing controls in the SO_2 NAAQS planning process.'' ASARCO observed that EPA could exercise its right to redesignate the area if progress toward ''implementing the controls reducing lead emissions'' were to stop or be delayed, and contended that such an approach would ensure expeditious attainment of the NAAQS while ''significantly reducing the burden'' on ADEQ, the planning organizations, and EPA.

Response: The Globe Highway monitoring site was chosen to capture the maximum ambient concentration of Pb in the Hayden area, based on the information available at the time.[15] This task was made particularly challenging by the complex meteorology and topography in the area. As previously noted, recently deployed monitors suggest the Globe Highway site may not be experiencing the highest concentrations of ambient Pb in the Hayden area. As a result, EPA disagrees with ASARCO's suggestion that we suspend the redesignation process based on recent improvements in air quality measured at the Globe Highway monitor and only restart it if new violations are recorded at the Globe Highway monitor. Further, while the controls required under the Hayden SO_2 SIP could possibly result in reductions in ambient concentrations of Pb, an SO_2 SIP is not designed for that purpose and will not ensure that the reductions are sufficient to achieve attainment of the Pb NAAQS. Accordingly, EPA does not agree that relying on the SO_2 NAAQS planning process to resolve the Pb problem will ensure expeditious attainment of the Pb standard.

[12] Letter from Eric L. Hiser, Law Offices of Jorden Bischoff & Hiser, P.L.C., Counsel for ASARCO, to Balaji Vaidyanathan, Air Permit Section Manager, ADEQ, Re: Proposed Converter Aisle Retrofit Project; ASARCO LLC—Hayden Operations—Operating Permit No. 1000042, dated September 26, 2012.

[13] EPA regulations allow sources to do a netting analysis that takes into account emissions changes at a facility within a contemporaneous period in order to determine whether an emissions increase resulting from a project is ''significant'' and therefore triggers new source review permitting requirements. 40 CFR 52.21(b)(3)(i) defines a ''net emissions increase'' in part as ''the increase in emissions from a particular physical change . . . [and] any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.'' In this particular case, ASARCO offset the increase in Pb emissions resulting from the converter aisle retrofit project (2.64 tons per year) with contemporaneous decreases from the anode furnace project (1.7 tpy) and the flash vent improvements (0.45 tons per year) to arrive at a net emissions increase of 0.49 tons per year.

[14] See the Final Phase II Remedial Investigation/Feasibility Study (RI/FS) Work Plan, Part 1 of 2—Air. ASARCO Hayden Plant Site. March 2012, pages 5–1 and 5–2.

[15] See Attachment A of ADEQ's Quality Assurance Program Plan for the Lead (Pb) Ambient Air Monitoring Network, dated October 2011. Also note that ADEQ is currently in the process of evaluating monitoring locations in order to ensure that it is monitoring at the location expected to capture the maximum concentrations in ambient air, taking into account logistics and the potential for population exposure.

Exposure to Pb is a serious health concern. It causes a range of adverse health effects, most notably in children. Exposures to low levels of Pb early in life have been linked to effects on IQ, learning, memory, and behavior.[16] Taking the ''wait and see'' approach advocated by ASARCO could delay by several years the implementation of controls designed to ensure attainment of the Pb NAAQS.

III. Final Action

For the reasons provided in the proposed rule and TSD and in this final rule, EPA is taking final action pursuant to section 107(d)(3) of the Clean Air Act to redesignate the Hayden area, which encompasses portions of southern Gila and eastern Pinal counties, from ''unclassifiable'' to ''nonattainment'' for the 2008 national ambient air quality standards for lead (Pb). This redesignation to nonattainment is based on violations of the 2008 Pb NAAQS recorded at the Globe Highway site and on additional relevant information as described above and in more detail in our proposal.

As a result of this redesignation to nonattainment, the Hayden area is subject to the applicable requirements of part D, title I of the Act (see section 191 of the Act). Within 18 months of the redesignation, the State is required to submit to EPA an implementation plan for the area containing, among other things: (1) Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented; (2) a demonstration, including modeling, that the plan will provide for attainment of the Pb NAAQS as expeditiously as practicable, but no later than five years after the area's designation as nonattainment; (3) provisions that result in reasonable further progress toward timely attainment by adherence to an ambitious compliance schedule; (4) contingency measures that are to be implemented if the area fails to achieve and maintain reasonable further progress or fails to attain the NAAQS by the applicable attainment date; and (5) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of Pb.[17] Lastly, the new Pb nonattainment area will be subject to EPA's general conformity regulations (40 CFR part 93, subpart B) upon the effective date of redesignation. See section 176(c) of the Act.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA has determined that today's redesignation to nonattainment, as well as the establishment of SIP submittal schedules, will result in none of the effects identified in Executive Order 12866, section 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. This redesignation, based upon air quality data showing that the Hayden area is not attaining the Pb standard and upon other air-quality-related considerations, does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules would merely establish the dates by which SIPs must be submitted, and would not adversely affect entities.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.,* a redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a redesignated area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and establishes a schedule to require the State to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has concluded that this rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is questionable whether a redesignation would constitute a federal mandate in any case. The obligation for the state to revise its State Implementation Plan that arises out of a redesignation is not legally enforceable and at most is a condition for continued receipt of federal highway funds. Therefore, it does not appear that such an action creates any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658(5)(a)(i)), and if it does the duty would appear to fall within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

Even if a redesignation were considered a Federal mandate, the anticipated costs resulting from the mandate would not exceed $100 million to either the private sector or state, local and tribal governments. Redesignation of an area to nonattainment does not, in itself, impose any mandates or costs on the private sector, and thus, there is no private sector mandate within the meaning of section 421(7) of UMRA (2 U.S.C. 658(7)). The only cost resulting from the redesignation itself is the cost to the State of Arizona of developing, adopting, and submitting any necessary SIP revision. Because that cost will not exceed $100 million, this action (if it is a federal mandate at all) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this action would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

E. Executive Order 13132, Federalism

Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' This rule

[16] Depending on the level of exposure, lead can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system. For more information regarding the health effects of Pb exposure, see 73 FR 66964, November 12, 2008, or *http://www.epa.gov/airquality/lead/health.html.*

[17] EPA has issued guidance on the statutory requirements applicable to Pb nonattainment areas. See 57 FR 13498 (April 16, 1992), 58 FR 67752 (December 22, 1993), 73 FR 66964 (November 12, 2008), and the memorandum signed by Scott Mathias, Interim Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. EPA, entitled ''2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers'' dated July 8, 2011, and its addendum, signed by Scott Mathias on August 10, 2012.

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, as specified in Executive Order 13132, because it merely redesignates an area for Clean Air Act planning purposes and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The area redesignated in today's action does not include any tribal lands, but is adjacent to the San Carlos Apache Tribe's reservation. EPA has been communicating with and plans to continue to communicate with representatives of the San Carlos Apache Tribe, as provided in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the extent that it applies to this action.

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

This rule is not subject to Executive Order 13045 (''Protection of Children from Environmental Health Risks'') (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action based on health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. The EPA believes that the requirements of NTTAA are inapplicable to this action because they would be inconsistent with the Clean Air Act.

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

Today's action redesignates an area to nonattainment for an ambient air quality standard. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Lead.

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

Dated: August 20, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.303, the table entitled ''Arizona—2008 Lead NAAQS'' is amended by revising the entries for ''Hayden, AZ'' to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
Hayden, AZ:		
Gila County (part)		
The portions of Gila County that are bounded by T4S, R15E; T4S, R16E (except those portions in the San Carlos Indian Reservation); T5S, R15E; T5S, R16E (except those portions in the San Carlos Indian Reservation).	10–3–14	Nonattainment.
Pinal County (part)		
The portions of Pinal County that are bounded by: T4S, R14E; T4S, R16E (except those portions in the San Carlos Indian Reservation); T5S, R14E; T5S, R15E; T6S, R16E (except those portions in the San Carlos Indian Reservation); T6S, R14E; T6S, R15E; T6S, R16E (except those portions in the San Carlos Indian Reservation).	10–3–14	Nonattainment.
* * * * *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

[FR Doc. 2014–20920 Filed 9–2–14; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0504; FRL–9915–46]

Trifloxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of trifloxystrobin in or on pea, dry, seed; pea, field, hay; and pea, field, vines. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 3, 2014. Objections and requests for hearings must be received on or before November 3, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0504, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0504 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 3, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0504, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 25, 2013 (78 FR 63938) (FRL–9901–96), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8180) by Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.555 be amended by establishing tolerances for residues of the fungicide trifloxystrobin, benzeneacetic acid, (E,*E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl)phenyl]ethylidene] amino]oxy]methyl]-, methyl ester, and the free form of its acid metabolite CGA–321113, (E,E)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid, calculated as the stoichiometric equivalent of trifloxystrobin, in or on pea, dry, seed at 0.06 parts per million (ppm); pea, field, hay at 15 ppm; pea, field, vines at 4.0 ppm; chickpea, seed at 0.06 ppm; and lentil, seed at 0.06 ppm. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has corrected proposed commodity definitions and eliminated certain proposed crop tolerances. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all

other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for trifloxystrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with trifloxystrobin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Trifloxystrobin exhibits very low toxicity following single oral, dermal and inhalation exposures. It is a strong dermal sensitizer and a mild dermal and eye irritant. In repeated dose tests in rats, the liver is the target organ for trifloxystrobin; toxicity is induced following oral and dermal exposure for 28 days. Liver effects characterized by an increase in liver weights and an increased incidence of hepatocellular hypertrophy and/or hepatocellular necrosis were seen in rats, mice, and dogs.

There is no concern for neurotoxicity or immunotoxicity in the database. In the rabbit developmental toxicity study, an increase in the incidence of fused sternabrae was seen at a dose 10 times higher than the maternal lowest observed adverse effect level (LOAEL). In the rat reproduction study, both parents and offspring showed decreases in body weight during lactation. The rat and rabbit developmental and the rat reproduction toxicity data do not demonstrate an increase in susceptibility in the fetus or other offspring.

Trifloxystrobin is classified as: ''Not likely to be Carcinogenic to Humans'' based on negative results in:

1. The battery of mutagenicicty tests (except at a cytoxic dose in one *in vitro* test), and

2. The long-term carcinogenicity studies in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by trifloxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 11, 2010 (75 FR 33190) (FRL–8829–2) and in the document ''Trifloxystrobin. Aggregate Human Health Risk Assessment for the Proposed New Uses on Chickpea, Dry Peas, and Lentils with Updated Residential Risk Estimates of All Existing Residential Uses (Lawns/Turf; Gardens and Trees),'' dated June 10, 2014, Appendix A, pp. 27–31 in docket ID number EPA–HQ–OPP–2013–0504.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for trifloxystrobin used for human risk assessment was discussed in Unit III B. of the final rule published in the **Federal Register** of June 11, 2010. However, subsequent to that **Federal Register** publication, EPA reassessed the liver effects seen in the 28-day dermal toxicity study according to current policy, and determined that since these effects should not be considered adverse, no toxicity endpoint was identified. The NOAEL for the 28-day dermal study was set at 1,000 mg/kg/day and the LOAEL was not established. Therefore, the endpoints assessed as part of this action exclude the endpoint for dermal exposure identified in the table published in the above-referenced **Federal Register** on June 11, 2010.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to trifloxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing trifloxystrobin tolerances in 40 CFR 180.555. EPA assessed dietary exposures from trifloxystrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for trifloxystrobin. In estimating acute dietary (food and water) exposure for females 13–49 years old, EPA conducted an analysis using the Dietary Exposure Evaluation Model (DEEM–FCID) Version 3.16. This model uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). An acute dietary assessment was conducted assuming tolerance level residues (plus the additional metabolite residues as noted in this paragraph) and 100 percent crop treated (PCT) for all commodities. For the dietary assessment, a value of 0.20 ppm for the metabolite L7a was added to the tolerance level for meat byproducts of cattle, goats, horses, and sheep to account for the higher residues in liver; therefore, these commodities were assessed in the dietary assessments at 0.3 ppm. Pork was assessed in the DEEM at the established tolerance level of 0.05 ppm; pork, liver was assessed at 0.16 ppm to account for the residues of the metabolite L7a. DEEM version 7.81 default processing factors were assumed except for where tolerances were established for processed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure

Evaluation Model (DEEM–FCID) Version 3.16. This model uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). A chronic dietary exposure assessment was conducted assuming 100 PCT, anticipated residues (ARs) for grapes, apples, oranges, and pears, and tolerance level residues for the rest of the commodities, including additional metabolite residues as noted in this paragraph. A value of 0.20 ppm for the metabolite L7a was added to the tolerance level for meat byproducts of cattle, goats, horses, and sheep to account for the higher residues in liver; therefore, these commodities were assessed in the dietary assessments at 0.3 ppm. Pork was assessed in the DEEM at the established tolerance level of 0.05 ppm; pork, liver was assessed at 0.16 ppm to account for residues of the metabolite L7a. DEEM version 7.81 default processing factors were assumed except for where tolerances were established for processed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that trifloxystrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue (AR) and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

EPA used anticipated residue information in the chronic dietary assessment for trifloxystrobin for grapes, apples, oranges, and pears.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for trifloxystrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of trifloxystrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and PRZMGround Water (PRZM–GW) models, the estimated drinking water concentrations (EDWCs) of total toxic residues of trifloxystrobin and its major degradation product for acute exposures are estimated to be 29 parts per billion (ppb) for surface water and 427 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 23 ppb for surface water and 365 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 427 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 365 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Trifloxystrobin is currently registered for the following uses that could result in residential exposures: Ornamentals and turfgrass. EPA assessed residential exposure from relevant registered trifloxystrobin products using the Agency's 2012 Residential Standard Operating Procedures (SOPs) along with updates in dermal risk assessment hazard and policy regarding body weight in addition to the following assumptions:

i. *Residential handler exposures.* Residential handler exposure is expected to be short-term only. Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners. Dermal handler exposures were not assessed since no adverse systemic dermal hazard was identified for trifloxystrobin.

ii. *Residential post-application exposures.* Since dermal hazard has not been identified for trifloxystrobin, a quantitative post-application assessment for dermal exposure is not necessary and the only exposure scenarios quantitatively assessed are for children 1 to <2 years old who may experience short-term incidental oral exposure to trifloxystrobin from treated turf. Incidental oral granule ingestion is not applicable because there is no endpoint identified for the acute dietary duration. Intermediate-term incidental oral post-application exposures are not expected because trifloxystrobin is not persistent in soil or water; furthermore, the short-term incidental oral risk estimates would be protective of the possible intermediate-term incidental oral exposures because the POD for both durations is the same. Post-application inhalation exposure is expected to be negligible for the proposed residential uses.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/science/residential-exposure-sop.html*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found trifloxystrobin to share a common mechanism of toxicity with any other substances, and trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that trifloxystrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no indication of increased

quantitative or qualitative susceptibility to trifloxystrobin in rats or rabbits. In the prenatal developmental study in rats, there was no developmental toxicity at and up to the limit dose. In the prenatal developmental study in rabbits, developmental toxicity was seen at a dose that was higher than the dose causing maternal toxicity. In the multigeneration study, offspring and parental LOAELs are at the same dose level.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for trifloxystrobin is complete. The Agency has waived requirements for a subchronic neurotoxicity study because:

a. Trifloxystrobin was not neurotoxic in the acute neurotoxicity study, nor in any of the repeated dose studies in the available data,

b. There is no evidence of neurotoxicity in the existing trifloxystrobin database or that of other strobilurin pesticides, and

c. Because endpoints and PODs used for risk assessment are likely to be protective of neurotoxicity concerns. EPA has also waived requirements for subchronic inhalation testing. Trifloxystrobin exhibits low toxicity (Category IV) via inhalation route of exposure.

ii. There is no indication that trifloxystrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. Adverse effects were not seen up to the limit dose in an acute neurotoxicity study. There is no evidence of neurotoxicity in subchronic and chronic toxicity studies (rats, dogs, mice), in developmental toxicity studies (rats, rabbits), or in a reproductive toxicity study (rats). There is no concern for neurotoxicity of trifloxystrobin based on the available database.

iii. There is no evidence that trifloxystrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The exposure databases are complete or are estimated based on data that reasonably account for potential exposures. The exposure assessments will not underestimate the potential dietary (food and drinking water) or non-dietary exposures for infants and children from the use of trifloxystrobin. The acute and chronic dietary food exposure assessment was conservatively based on 100 PCT assumptions and conservative ground water drinking water modeling estimates. The dietary drinking water assessment utilizes water concentration values generated by models and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations, and are not likely to be exceeded. In addition, the residential post-application assessment is based upon the residential SOPs employing surrogate study data and reasonable ''worst-case'' assumptions. These data and assessments are reliable and are not expected to underestimate exposure and risk posed by trifloxystrobin to adults or children as well as incidental oral exposure of young children (1–2 years old).

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. With the exception of the subpopulation group, females 13 to 49 years old, no adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to trifloxystrobin will occupy 1.3% of the aPAD for females 13–49 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to trifloxystrobin from food and water will utilize 32% of the cPAD for the general U.S. population and 78% for all infants <1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of trifloxystrobin is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Trifloxystrobin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to trifloxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs for adults of 300 (from food, water and residential inhalation exposures) and for children 120 (from food, water and residential incidental/hand-to-mouth oral exposure). Because EPA's level of concern for trifloxystrobin is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Although the Agency identified an intermediate-term endpoint, the Agency does not expect trifloxystrobin to result in intermediate-term residential exposure, due to the intermittent nature of homeowner applications and its short soil half-life (about 2 days). Therefore, the Agency relies on the chronic risk assessment to account for intermediate-term risk and concludes that trifloxystrobin does not pose an intermediate-term aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, trifloxystrobin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to trifloxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography method with nitrogen phosphorus detection (GC/NPD), Method AG–659A) is available to enforce the tolerances for the combined residues of trifloxystrobin and CGA–321113 in plant and livestock commodities. Subject crops under this

action were analyzed for residues of trifloxystrobin and CGA–321113 using a high performance liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS). The lowest level of method validation (LLMV) is equivalent to the limit of quantitation (LOQ) which is 0.010 ppm for each analyte in/on all matrices.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for trifloxystrobin on the crops subject to this action.

C. Revisions to Petitioned-For Tolerances

EPA determined that the proposed tolerances for chickpea hay and vines are not needed since both commodities are not significant livestock feed items. In addition, the proposed tolerances on chickpea seed and lentil seed are not needed since pea, dry, seed under the definition in 40 CFR 180.1 includes these commodities.

To reflect the correct commodity definitions, EPA revised the proposed commodity listings for ''pea, dry, hay'' and ''pea, dry, vines'' to read: ''pea, field, hay'' and ''pea, field, vines'', respectively.

V. Conclusion

Therefore, tolerances are established for residues of trifloxystrobin, benzeneacetic acid, (E,E)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene] amino]oxy]methyl]-, methyl ester, and the free form of its acid metabolite CGA–321113, (E,E)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid, calculated as the stoichiometric equivalent of trifloxystrobin, in or on pea, dry, seed at 0.06 ppm; pea, field, hay at 15 ppm; and pea, field, vines at 4 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.555, add alphabetically the following entries to the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pea, dry, seed	0.06
Pea, field, hay	15
Pea, field, vines	4
* * * * *	

* * * * *

[FR Doc. 2014–20928 Filed 9–2–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0622 and EPA–HQ–OPP–2014–0124; FRL–9912–91]

Saflufenacil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes and revises tolerances for residues of saflufenacil in or on multiple commodities which are identified and discussed later in this document. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 3, 2014. Objections and requests for hearings must be received on or before November 3, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The dockets for this action, identified by docket identification (ID) numbers EPA–HQ–OPP–2013–0622 and EPA–HQ–OPP–2014–0124, are available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID numbers EPA–HQ–OPP–2013–0622 and EPA–HQ–OPP–2014–0124 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 3, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0622 and EPA–HQ–OPP–2014–0124, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of October 25, 2013 (78 FR 63938) (FRL–9901–96), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8192) by BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.649 be amended by establishing tolerances for residues of the herbicide saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino] sulfonyl]benzamide, and its metabolites, *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N*′-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino)sulfonyl]amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on grass, forage at 15 parts per million (ppm); grass, hay at 20 ppm; grass, seed screenings at 0.9 ppm; and grass, straw at 1.5 ppm and revising the livestock commodity tolerances for (cattle, goat, horse, and sheep): Fat from 0.01 ppm to 0.05 ppm; liver from 2.5 ppm to 45 ppm; and meat byproducts, except liver from 0.05 ppm to 0.5 ppm; hog, fat from 0.01 ppm to 0.05 ppm; hog, liver from 0.80 ppm to 45 ppm; and hog, meat byproducts, except liver from 0.02 ppm to 0.5 ppm.

The same **Federal Register** document of October 25, 2013, also announced

BASF Corporation's filing of a pesticide petition (PP 3F8185) that requested 40 CFR 180.649 be amended by revising tolerances for saflufenacil and its metabolites in or on barley, grain from 0.10 ppm to 1.0 ppm; barley, straw from 0.10 ppm to 15.0 ppm; barley, bran from 0.10 ppm to 1.53 ppm; wheat, grain from 0.10 ppm to 0.6 ppm; and wheat, straw from 0.10 ppm to 6.0 ppm, included under the existing tolerances for ''Grain, cereal, group 15'' and ''Grain, cereal, forage, fodder and straw group 16.'' In addition, BASF Corporation requested to amend the existing commodity definition, ''Grain, cereal, forage, fodder and straw group 16'' to ''Grain, cereal, forage, fodder and straw, group 16, except barley, rice and wheat straw'' as well as amend the commodity definition, ''Grain, cereal, group 15'' to ''Grain, cereal, group 15, except barley and wheat.''

Finally, in the **Federal Register** of February 25, 2014 (79 FR 10458) (FRL–9906–77), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8229) by BASF Corporation. The petition requested that 40 CFR 180.649 be amended by establishing tolerances for residues of the herbicide saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino]sulfonyl]benzamide, and its metabolites, *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N*′-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino)sulfonyl] amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil in or on olive at 0.03 ppm. These documents referenced summaries of the petitions prepared by BASF Corporation, the petitioner, which are available in the dockets, *http://www.regulations.gov*. There were no comments received in response to these notices of filings.

Based upon review of the supporting data, EPA has made modifications to the proposed tolerances which include:

1. Rounding the proposed tolerance for barley, bran.

2. Revising the commodity definition for crop group 16.

3. Decreasing the proposed tolerances for grass, seed screenings and grass, straw.

4. Increasing the existing tolerance for residues in or on grain, aspirated fractions.

5. Making several changes to the proposed livestock tolerances.

The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for saflufenacil, including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with saflufenacil follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the **Federal Register** of February 21, 2014 (79 FR 9861) (FRL–9905–87), EPA published a final rule establishing tolerances for residues of the herbicide saflufenacil and its metabolites in or on sugarcane, fish, and shellfish commodities based on EPA's conclusion that aggregate exposure to saflufenacil is safe for the general population, including infants and children. Since that rulemaking, there have been no additional tolerance actions for saflufenacil, nor has the toxicity profile for saflufenacil changed. Specific information on the studies received and the nature of the adverse effects caused by saflufenacil, as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in that rulemaking which can be found in the docket under docket ID numbers EPA–HQ–OPP–2012–0775 and EPA–HQ–OPP–2013–0008.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the lowest dose at which the LOAEL are identified. Uncertainty/safety factors (UFs) are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*. A summary of the toxicological endpoints for saflufenacil used for human risk assessment is discussed in Unit III.B. of the February 21, 2014 **Federal Register** final rule.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to saflufenacil, EPA considered exposure under the petitioned-for tolerances as well as all existing saflufenacil tolerances in 40 CFR 180.649. EPA assessed dietary exposures from saflufenacil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for saflufenacil. In estimating acute dietary exposure, EPA used food

consumption information from the United States Department of Agriculture National Health and Nutrition Examination Survey, What We Eat in America, (USDA NHANES/WWEIA, 2003–2008). As to residue levels in food, EPA assumed 100 percent crop treated (PCT), Dietary Exposure Evaluation Model (DEEM) 7.81 default processing factors, and tolerance-level or higher (i.e., tolerance levels adjusted to take into account metabolite levels) residues for all foods.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA NHANES/WWEIA, 2003–2008. As to residue levels in food, EPA made the same assumptions (adjusted tolerance-level residues and 100 PCT) as in the acute dietary exposure assessment.

iii. *Cancer.* As indicated in the February 21, 2014 **Federal Register** final rule preamble for saflufenacil, EPA has concluded that saflufenacil does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for saflufenacil. Tolerance-level residues (or higher) and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for saflufenacil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of saflufenacil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Tier 1 Rice Model and Tier II Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of saflufenacil for acute exposures are estimated to be 133 parts per billion (ppb) for surface water and 69.2 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 120 ppb for surface water and 51.5 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 133 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 120 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Saflufenacil is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found saflufenacil to share a common mechanism of toxicity with any other substances, and saflufenacil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that saflufenacil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Increased fetal susceptibility was observed in the developmental toxicity studies in the rat and rabbit and in the 2-generation reproduction study in the rat. Developmental effects (decreased fetal body weights and increased skeletal variations in rats and increased liver porphyrins in rabbits) occurred at doses that were not maternally toxic in the developmental studies, indicating increased quantitative susceptibility. In the 2-generation reproductive toxicity study in rats, the reported offspring effects were more severe than the maternal effects at the same dose level, indicating evidence for increased qualitative susceptibility. An increased number of stillborn pups, decreased viability and lactation indices, decreased pre-weaning body weight and/or body-weight gain, and changes in hematological parameters occurred at the same dose level as maternal decrements in food intake, body weight, body-weight gain, and changes in hematological parameters and organ weights indicative of anemia.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for saflufenacil is complete.

ii. There is no indication that saflufenacil is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. The concern for increased susceptibility following prenatal or postnatal exposure is low because clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproductive toxicity study. Further, the dose-response relationship for the effects of concern is also well characterized and being used for assessing risks. None of the effects in the developmental or reproduction studies were attributable to a single exposure and, therefore, are not of concern for acute risk assessment. The chronic point of departure used for risk assessment is protective of any developmental and offspring effects observed in these studies.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to saflufenacil in drinking water. These assessments will not underestimate the exposure and risks posed by saflufenacil.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to saflufenacil will occupy <1% of the aPAD for infants less than 1-year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to saflufenacil from food and water will utilize 20% of the cPAD for infants less than 1-year old, the population group receiving the greatest exposure. There are no residential uses for saflufenacil.

3. *Short and intermediate-term risk.* Short and intermediate-term aggregate exposure takes into account short and intermediate-term residential exposures plus chronic exposure to food and water (considered to be a background exposure level). Because there is no short or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for saflufenacil.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, saflufenacil is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to saflufenacil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods ''D0603/02'' and ''L0073/01'' (liquid chromatography/mass spectroscopy/mass spectroscopy (LC–MS/MS)) are available to enforce the tolerance expression. These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are MRLs established for residues of saflufenacil, measuring the levels of the parent only and not residues of the metabolites, as follows: 0.01 ppm in or on cereal grains, which includes barley, corn, and wheat; 0.05 ppm for maize fodder (dry), sorghum straw and fodder, dry; 0.05 ppm for barley straw and fodder, dry; 0.05 ppm for wheat straw and fodder, dry; 0.01 mammalian fats (except milk fats), which includes cattle, goat, hog, horse, and sheep; and 0.3 edible offal mammalian, which includes cattle, goat, hog, horse, and sheep.

Harmonization between the Codex MRLs for cereal grains and the U.S. tolerances for barley, grain and wheat, grain and between the Codex MRL for barley straw and fodder, dry and the U.S. tolerance for barley, straw and between the Codex MRL for wheat straw and fodder, dry and the U.S. tolerance for wheat, straw is not possible as the U.S. use pattern (harvest-aide/burndown application) results in significantly higher residues than the Codex use pattern (pre-emergence application). The higher residues translate into higher residues of saflufenacil in animal byproducts than are covered by the corresponding Codex MRLs for livestock commodities under the Codex use pattern; therefore, U.S. tolerances for livestock commodities cannot be harmonized with Codex MRLs for corresponding livestock commodities.

The U.S. tolerances for crop groups 15 and 16 are not harmonized with the Codex MRLs for cereal grains and straw and fodder because the compliance with the Codex MRLs involve measurement of residues of the parent only and not the metabolites, whereas the U.S. tolerance requires measurement of both, in order to be harmonized with Canadian tolerances.

C. Revisions to Petitioned-for Tolerances

EPA is making several revisions to the petitioned-for tolerances. These include the following. First, the petitioned value for barley bran is being rounded from 1.53 ppm to 1.5 ppm to be consistent with the current Organization for Economic Cooperation and Development (OECD) tolerance-calculation procedure. Second, the commodity definition ''Grain, cereal, forage, fodder, and straw group 16 (except barley, wheat and rice straw)'' is being revised to ''Grain, cereal, forage, fodder and straw group 16 (except barley and wheat straw)'' as the new use pattern (harvest aid/desiccant) was not proposed for rice. Third, the petitioner requested tolerance values for grass straw and seed screenings were based on data from trials in which the samples were harvested at a significantly shorter preharvest interval (PHI) than that listed on the label. Additional residue data reflecting the actual PHI listed on the label showed lower residue levels; therefore, the tolerance values for grass straw and seed screenings are being decreased. Fourth, the existing tolerance of 10 ppm for residues in or on grain, aspirated fractions is being increased to 50 ppm as a result of the new tolerances for cereal grains and based on available residues data. Finally, EPA is making several revisions to the proposed livestock tolerances which include:

1. Decreasing the proposed tolerances for cattle, goat, sheep, hog and horse fat from 0.05 ppm to 0.04 ppm and meat byproducts (except liver) from 0.05 ppm to 0.03 ppm.

2. Increasing the tolerances proposed for cattle, goat, sheep and horse liver from 45 ppm to 50 ppm.

3. Decreasing the tolerance proposed for hog liver from 45 ppm to 2.0 ppm.

4. Establishing tolerances for cattle, goat, sheep and horse meat at 0.02 ppm.

5. Retaining the currently established tolerances for hog, fat or hog, meat byproducts (except liver), instead of increasing them as requested.

The tolerances being set for residues in livestock differ from the petitioned-for tolerances due to differences in calculation methods of the maximum reasonably balanced diets (MRBDs) with the results of the ruminant feeding study. It also appears that the petitioner over-estimated residues in hog commodities as a result of using the cattle MRDB.

V. Conclusion

Therefore, tolerances are established for residues of saflufenacil, including its metabolites and degradates, as set forth in the regulatory text. Compliance with the plant tolerances is to be determined by measuring the sum of saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl)amino]sulfonyl]benzamide, and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N'*-isopropylsulfamide and *N*-[4-chloro-2-fluoro-5-({[(isopropylamino) sulfonyl]amino}carbonyl)phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil. Compliance with the livestock tolerances is to be determined by measuring only saflufenacil, 2-chloro-5-[3,6-dioxo-4-(trifluoromethyl)-3,6-dihydro-1(2H)-pyrimidinyl)-4-fluoro-N-[[methyl(1-methylethyl)amino]sulfonyl]benzamide.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.649:

■ a. Remove the commodities ''Grain, aspirated fractions,'' ''Grain, cereal, forage, fodder and straw group 16,'' and ''Grain, cereal, group 15'' in the table in paragraph (a)(1).

■ b. Add alphabetically the following commodities to the table in paragraph (a)(1).

■ c. Revise the following commodities in the table in paragraph (a)(2).

The amendments read as follows:

§ 180.649 Saflufenacil; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Barley, bran	1.5
Barley, grain	1.0
Barley, straw	15
* * * * *	
Grain, aspirated grain fractions	50
Grain, cereal, forage, fodder and straw group 16 (except barley and wheat straw)	0.10
Grain, cereal, group 15 (except barley and wheat grain)	0.03
* * * * *	
Grass, forage	15
Grass, hay	20
Grass, seed screenings	0.15
Grass, straw	0.15
* * * * *	
Olive	0.03
* * * * *	
Wheat, grain	0.60
Wheat, straw	6.0

* * * * *

(2) * * *

Commodity	Parts per million
Cattle, fat	0.04

Commodity	Parts per million
Cattle, liver	50
Cattle, meat	0.02
Cattle, meat byproducts, except liver	0.30
* * * * *	
Goat, fat	0.04
Goat, liver	50
Goat, meat	0.02
Goat, meat byproducts, except liver	0.30
* * * * *	
Hog, liver	2.0
* * * * *	
Horse, fat	0.04
Horse, liver	50
Horse, meat	0.02
Horse, meat byproducts, except liver	0.30
* * * * *	
Sheep, fat	0.04
Sheep, liver	50
Sheep, meat	0.02
Sheep, meat byproducts, except liver	0.30

* * * * *

[FR Doc. 2014–20947 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2013–0624 FRL 9915–99–Region 6]

Texas: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Texas has applied to the Environmental Protection Agency (EPA) for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this direct final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Texas' changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on November 3, 2014 unless the EPA receives adverse written comment by October 3, 2014. If the EPA receives such comment, it will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

2. *Email: patterson.alima@epa.gov*.

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov,* or email. The Federal *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 *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy Texas' application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Texas Commission on Environmental Quality, (TCEQ) 12100 Park S. Circle, Austin Texas 78753–3087, (512) 239–6079 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533, EPA Region 1445 Ross Avenue, Dallas, Texas 75202–2733, and Email address *patterson.alima@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that the State of Texas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant the State of Texas Final Authorization to operate its hazardous waste program with the changes described in the authorization application. The State of Texas has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are

authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Texas including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in the State of Texas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. The State of Texas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- enforce RCRA requirements and suspend or revoke permits and
- take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which the State of Texas is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For what has Texas previously been authorized?

The State of Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program, effective October 4, 1985 (51 FR 3952), February 17, 1987 (51 FR 45320), March 15, 1990 (55 FR 7318), July 23, 1990 (55 FR 21383), October 21, 1991 (56 FR 41626), December 4, 1992 (57 FR 45719), June 27, 1994 (59 FR 16987), June 27, 1994 (59 FR 17273), November 26, 1997 (62 FR 47947), December 3, 1997 (62 FR 49163), October 18, 1999 (64 FR 44836), November 15, 1999 (64 FR 49673), September 11, 2000 (65 FR 43246), June 14, 2005 (70 FR 34371), December 29, 2008, (73 FR 64252), and July 13, 2009 (74 FR 22469). The EPA incorporated by reference Texas' then authorized hazardous waste program effective December 3, 1997 (62 FR 49163), November 15, 1999 (64 FR 49673), December 29, 2008 (73 FR 64252), March 7, 2011 (76 FR 12285) effective May 6, 2011 and March 6, 2012 (77 FR 13200) effective May 7, 2012.

On March 28, 2013, Texas submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. In 1991, Texas Senate Bill 2 created the Texas Natural Resource Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. House Bill 2912, Article 18 of the 77th Texas Legislature, 2001, changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and directed the TNRCC to adopt a timetable for phasing in the change of the agency's name. The TNRCC decided to make the change of the agency's name to the TCEQ effective September 1, 2002. The change of name became effective September 1, 2002, and the legislative history of the name change is documented at (See, Act of June 15, 2001, 77th Leg. R. S., Ch 965, Section 18.01, 2001 Tex. Gen. Laws 1985). The TCEQ may perform any act authorized by law either as the TNRCC or as the TCEQ. *Id.* Therefore, references to the TCEQ are references to TNRCC and to its successor, the TCEQ.

The TCEQ has primary responsibility for administration of laws and regulations concerning hazardous waste. The official State regulations may be found in Title 30, Texas Administrative Code, Chapters 305, 324 and 335, effective February 21, 2013. Some of the State rules incorporate the Federal regulations by reference. Texas Water Code Section 5.103 and Section 5.105 and Texas Health and Safety Code Section 361.017 and Section 361.024 confer on the Texas Commission on Environmental Quality the powers to perform any acts necessary and convenient to the exercise of its jurisdiction. The TCEQ is authorized to administer the RCRA program. However, the Railroad Commission (RRC) has jurisdiction over the discharge, storage, handling, transportation, reclamation, or disposal of waste materials (both hazardous and non-hazardous) that result from the activities associated with the exploration, development, or production of oil or gas or geothermal resources and other activities regulated by the RRC. A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at Texas Health and Safety Code Section 401.415. Such wastes are termed ''oil and gas wastes.'' The TCEQ has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer that waste under RCRA. The TCEQ jurisdiction over Solid waste can be found at Chapter 361, Sections 361.001 through 361.754 of the Texas Health and Safety Code. The TCEQ's jurisdiction encompasses hazardous and nonhazardous, industrial and municipal Solid waste. The definition of Solid waste can be found at Texas Health and Safety Code Section 361.003(34). When the RRC is authorized by EPA to administer the RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TCEQ to the RRC. The EPA has designated the TCEQ as the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of

any hazardous waste for which TCEQ has not been previously authorized.

Further clarification of the jurisdiction between the TCEQ and the RRC can be found in a separate document. This document, a Memorandum of Understanding (MOU), became effective on May 31, 1998.

The TCEQ has the rules necessary to implement EPA's RCRA Clusters XIX through XXI excluding the Definition of Solid Waste (Checklist 219) in RCRA Cluster XIX and Removal of ''Saccharin and Its Salts'' from the Lists of Hazardous Generator Standards Technical Corrections (Checklist 225) also in RCRA Cluster XXI, because the TCEQ did not adopt these rules. The State is also seeking authorization for Recycled Used Oil Management Standards; Clarification (Checklist 203), Uniform Hazardous Waste Manifest Rule (Checklist 207), Academic Laboratories Generator Standards (Checklist 220), Organization for Economic Cooperation and Development ((OECD) (Checklist 222)) Requirements, Hazardous Waste Technical Corrections and Clarification (Checklist 223) and Academic Laboratories Generator Standards Technical Corrections (Checklist 226). The TCEQ authority includes changes to 30 Texas Administrative Code Chapters 305, 324, and 335. The Commissioners adopted these rules on January 29, 2013 and the rules became effective on February 21, 2013. The TCEQ authority to incorporate Federal rules by reference can be found at Texas Administrative Code 335 Sections 335.28, 335.29 and 335.31.

G. What changes are we approving with today's action?

On March 28, 2013, the State of Texas submitted a final complete program application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a direct final decision, subject to receipt of written comments that oppose this action that the State of Texas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. The State of Texas revisions consist of regulations which specifically govern Federal Hazardous Waste revisions promulgated from July 30, 2003, through December 20, 2010. The adoption for RCRA Clusters XIX through XXI are Checklists 220, 222, 223, and 226. Also Checklists 203, 207 and 208 are included in the below chart.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Recycled Used Oil Management Standards; Clarification. (Checklist 203).	64 FR 44659–44665 July 30, 2003	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Section 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335.78(j), 224.1, 324.3 and 324.14 as amended January 29, 2013 effective February 21, 2013.
2. Uniform Hazardous Waste Manifest Rule. (Checklist 207).	70 FR 10776–10825 March 4, 2005.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Section 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335.1(39), 335.1(95), 335.1(96), 335.10(a), 335.41(f)(2)(iii), 335.67, 335.67(b), 335.68, 335.69, 335.69(m), 335.76(d), 335.11(a), 335.12(a), 335.152(a)(4), 335.15(3), and 335.112(a)(4), as amended January 29, 2013 effective February 21, 2013.
3. Methods Innovation and SW–846 Final Update IIIB. (Checklist 208).	70 FR 34538–34592 June 14, 2005. As amended August 1, 2005; 70 FR 44150–44151.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Section 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335.31, 4 as amended 335.504(1), 335.504(3), 335.504(2), 335.29(1), 335.29(2), 335.152(a)(8), 335.175(c), 335.152(a)(17)(c), 335.152(a)(17), 335.152(a)(18), 335.152(a)(21), 335.152(a)(9), 335.125(d), 335.152(19), 335.221(a)(1), 335.221(a)(3), 335.221(a)(17), 335.221(a)(23), 335.221(a), 335.431(c)(1), 305.50(a)(4)(A), 305.172(2)(a)(iii)–(iv), 324.1, 324.11, 324.12 and 324.13, amended and effective February 21, 2013.
4. Academic Laboratories Generator Standards. (Checklist 220).	73 FR 72912–72960 December 1, 2008.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Section 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335.78(c)(6), 335.78(c)(7), 335.61(i) and 335.79, 335.61(i) and 335.61(i)(1)–(2), 335.61(i)(2), and 335.79, as amended January 29, 2013 effective February 21, 2013.
5. OECD Requirements; Export Shipments of Spend Lead-Acid Batteries. (Checklist 222).	75 FR 1236–1262 January 8, 2010.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Section 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335.13(o), 335.13(k), 335.76, 335.24(c)(1)(A), 335.76(a), 335.76(f), 335.76(h), 335.11(e), 335.152(a)(1), 335.112(a)(1), 335.112(a)(4) and 335.71(d), as amended January 29, 2013 effective February 21, 2013.
6. Hazardous Waste Technical Corrections and Clarifications. (Checklist 223).	75 FR 13009, 75 FR 31716–31717, March 18, 2010, June 4, 2010.	Texas Water Code Annotated Sections 5.103 and 5.105, Texas Health & Safety Code Annotated Section 361.017 and 361.024; 30 Texas Administrative Code, Chapter 335.504(1), 335.1(138)(A)(iv) and 335.1(138(D)(iv), 335.504(2), 335.504(3), 335.61(e), 335.77, 335.62, 335.10(a), 335.69(a)(4)(B), 335.69(b), 335.69(d), 335.69(e), 335.69(f)(4)(C), 335.10(a), 335.2(o), 335.94, 335.152(a)(3), 335.153(2), 335.12(e), 335.12(c), 335.175, 335.152(a)(12), 335.152(a)(14), 335.112(a)(3), 335.113(2), 335.12, 335.125, 335.112(a)(13), 335.211(b), 335.211(b), 335.213, 335.241(d), 335.251(b)(1), 335.222(e)(1)(E), 335.431(c)(1), and 305.122(a), as amended January 29, 2013 effective February 21, 2013.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
7. Academic Laboratories Generator Standards Technical Corrections. (Checklist 226).	75 FR 79304–79308 December 20, 2010.	Texas Water Code Annotated Sections 5.103 and 5.105, 7.031, Texas Health & Safety Code Annotated Section 361.024, 361.082; Texas Administrative Code 335.79), as amended January 29, 2013 effective February 21, 2013.

H. Where are the revised State Rules different from the Federal Rules?

The State hazardous waste program is at least as equivalent to the Federal program in all areas, except where the State program is more stringent and broader in scope. The State's more stringent and broader in scope provisions are listed in the State codification crosswalk dated July 2009. Under RCRA title C provisions, the EPA cannot authorize broader in scope provisions because the Agency cannot enforce those regulations.

I. Who handles permits after the authorization takes effect?

The State of Texas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Texas is not yet authorized.

J. How does today's action affect Indian Country (18 U.S.C. 1151) in Texas?

The State of Texas Hazardous Program is not being authorized to operate in Indian Country.

K. What is codification and is the EPA codifying Texas' hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart SS for this authorization of Texas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** document.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application; to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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 document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective November 3, 2014.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 5, 2014.

Ron Curry,

Regional Administrator, EPA Region 6.

[FR Doc. 2014–20789 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 12–267, 11–43; FCC 13–111]

Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Report and Order* adopting comprehensive changes to the Commission's rules governing licensing and operation of space stations and earth stations for the provision of satellite communication services. This document is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of all of the rule changes adopted in the *Report and Order.*

DATES: 47 CFR 25.170, 25.171, 25.172, 25.173, 25.285, 25.286, and 25.287, and the amendments to 47 CFR 25.103, 25.111, 25.112, 25.113, 25.114, 25.115, 25.118, 25.121, 25.129, 25.130, 25.131, 25.132, 25.133, 25.134, 25.135, 25.136, 25.138, 25.140, 25.142, 25.143, 25.144, 25.145, 25.146, 25.153, 25.154, 25.161, 25.164, 25.201, 25.202, 25.203, 25.204, 25.206, 25.208, 25.209, 25.210, 25.211, 25.212, 25.214, 25.215, 25.217, 25.218, 25.220, 25.221, 25.222, 25.223, 25.226, 25.227, 25.259, 25.260, 25.271, 25.272, 25.276, and 25.281 published February 12, 2014 (79 FR 8308) are effective September 3, 2014.

The incorporation by reference of certain publications listed in 47 CFR 25.281 is approved by the Director of the Federal Register as of September 3, 2014.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on August 15, 2014, OMB approved the information collection requirements contained in the Commission's *Report and Order,* FCC 13–111, published at 79 FR 8308, February 12, 2014. The OMB Control Number is 3060–0678. While not all the revisions to part 25 adopted in the *Report and Order* required approval by OMB under the PRA, many did. Those requirements could not go into effect until OMB approved the information collection requirements and the Commission published a notice announcing the effective date of those requirements. To avoid confusion, all rule changes adopted in the Report and Order will become effective on the same date. The Commission publishes this notice as an announcement of the effective date of the requirements. Publication of this effective date announcement does not alter the revisions and amendments made to the publication of FCC 13–111 at 79 FR 8308 in 79 FR 44312 (47 CFR 25.140(b)); 79 FR 44140 (47 CFR 25.285(a)(2)); 79 FR 27502 (47 CFR 25.149(a)(1)); or 79 FR 27503 (47 CFR 25.113). Additionally, the Definition of Earth Stations Aboard Aircraft in 47 CFR 25.103 adopted April 17, 2014, and released on April 18, 2014 (FCC 14–45), should remain as published at 79 FR 26863, May 12, 2014; effective June 11, 2014. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0678, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on August 15, 2014, for the new information collection requirements contained in the Commission's rules at 47 CFR 25.140, 25.145, 25.146, 25.264, 25.144, 25.142, 25.143, 25.115, 25.130, 25.132, 25.111, 25.114, 25.133, 25.218, 25.220, 25.203, 25.138, 25.131, 25.134, 25.221, 25.222, 25.226, 25.227, 25.129, 25.135, 25.223, 25.144, 25.121, 25.170, 25.113, 25.118, 25.143, 25.173, 25.171, 25.172, 25.259, 25.260, 25.164.

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0678.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0678.

OMB Approval Date: August 15, 2014.

OMB Expiration Date: August 31, 2017.

Title: Part 25 of the Federal Communications Commission's Rules: Governing the Licensing of, and Spectrum Usage By, Commercial Earth Stations and Space Stations.

Form No.: FCC Form 312—Main, FCC Form 312—Schedule A, FCC Form 312—Schedule B, FCC Form 312–R, FCC Form 312–EZ, FCC Form 312—Schedule S.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,880 respondents and 4,928 responses.

Estimated Time per Response: 0.5 to 80 hours.

Frequency of Response: On occasion, one time and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 308, 309, 332 and 705 unless otherwise noted.

Total Annual Burden: 34,155 hours.

Total Annual Cost: $9,998,785.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 9, 2013, the Federal Communications Commission (Commission) released a Report and Order (R&O) titled, ''In the Comprehensive Review of Licensing and Operating Rules for Satellite Services,'' FCC 13–111. In this R&O, the Commission adopted comprehensive changes to Part 25 of the Commission's rules, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services. Many of the amendments are substantive changes intended to afford licensees as much operational flexibility as possible consistent with minimizing harmful interference and easing administrative burdens on licensees, applicants, and the Commission. Additionally, this information collection is revised by incorporating existing separate information collection requirements under Part 25 into this information collection. Specifically, the revision of OMB Control No. 3060–0678 (Part 25 of the Commission's Rules) consolidated information collections that were approved under OMB Control Nos. 3060–0768 (28 GHz Band Segmentation Plan), 3060–0955 (2 GHz Mobile Satellite Service Reports), 3060–0962 (Redesignation of the 18 GHz Band), 3060–0994 (Flexibility for Delivery of Communications by MSS Providers), 3060–1013 (Mitigation of Orbital Debris), 3060–1014 (Ku-band NGSO FSS), 3060–1059 (Global Mobile Personal Communications by Satellite (GMPCS)/E911 Call Centers), 3060–1061 (Earth Stations on Board Vessels (ESVs)), 3060–1066 (Renewal of Application for Satellite Space and Earth Station Authorization), 3060–1067 (Qualification Questions), 3060–1095 (Surrenders of Authorizations), 3060–1097 (Rules for Broadcasting Satellite Service), 3060–1106 (Vehicle Mounted Earth Stations (VMES)), 3060–1108 (Consummation of Assignments and Transfers of Control), 3060–1153 (Satellite Digital Radio Service (SDARS)), and 3060–1187 (Earth Stations Aboard Aircraft (ESAA)) into collection 3060–0678. Therefore, the number of respondents, number of responses, annual burden hours and annual costs have been amended from the previous submission that was approved by the Office of Management and Budget (OMB) on March 13, 2013.

The information collection requirements accounted for in this collection are needed to determine the technical and legal qualifications of applicants or licensees to operate a station and to determine whether the authorization is in the public interest, convenience, and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would not be able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. 2014–20578 Filed 9–2–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 01–229 and 01–231; RM–10257, RM–10259, RM–11285, and RM–11291, DA 14–1215]

Radio Broadcasting Services; Caseville, Harbor Beach, Lexington, and Pigeon, Michigan

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Audio Division grants Petitions for Reconsideration filed by Edward Czelada (''Czelada'') and Sanilac Broadcasting Company (''Sanilac'') and reserves Channel 256A at Lexington, Michigan, for noncommercial educational (''NCE'') use because no other channels in the reserved FM band are available; and the channel would provide a first or second NCE service to more than 2,000 persons who constitute ten percent of the population within the allotment's 60 dBu contour. *See also* **SUPPLEMENTARY INFORMATION**.

DATES: *Effective* October 6, 2014.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MB Docket Nos. 01–229 and 01–231; DA 14–1215, adopted August 21, 2014, and released August 22, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *bcpiweb.com*.

The *Report and Order* in this consolidated proceeding, *inter alia,* allotted Channel 256A at Lexington, Michigan, on an unreserved basis in response to a Counterproposal filed by Czelada. *See* 71 FR 246, January 4, 2006. Czelada seeks reconsideration because the *Report and Order* was silent on his alternative request to reserve Channel 256A at Lexington for NCE use. Liggett Communications, a broadcast licensee that was not previously a party to this proceeding, expresses an interest in Channel 256A on an unreserved basis and argues that the channel should not be reserved for NCE use because Czelada had made ''no showing'' for the reservation.

In the *Memorandum Opinion and Order,* the staff takes three actions. First, although Czelada's Petition for Reconsideration was improperly addressed and was not received at the Office of the Secretary by the filing deadline, the staff, on its own motion, waives § 1.429(d) and (h) of the Commission's rules in order to reach the merits. Second, contrary to Leggett's contention, the staff finds that Czelada's reservation showing was sufficient and that the public interest would be served by reserving Channel 256A at Lexington for NCE use because the allotment would provide a first or second NCE service to 4,090 persons. Third, the staff concludes that Liggett's expression of interest in Channel 256A at Lexington is late filed and cannot be considered.

Although the *Report and Order* allotted Channel 256A at Lexington, Michigan, on an unreserved basis, we note that the channel was inadvertently removed. *See* 71 FR 76208, December 20, 2006. Accordingly, we add the channel and reserve it for NCE use.

The Commission will send a copy of the *Memorandum Opinion and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM allotments under Michigan, is amended by adding Lexington, Channel *256A.

[FR Doc. 2014–20961 Filed 9–2–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 12–283; FCC 14–74]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations of the Commission's rules, which were published in the **Federal Register** on Friday, June 20, 2014, 79 FR 35290. The final regulations address the rules for the Amateur Radio Service.

DATES: *Effective* September 3, 2014.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending 47 CFR Part 97 in the **Federal Register** of June 20, 2014, (79 FR 35290). The amended rules are necessary for modifying the qualifying examination system to grant partial examination credit for certain expired amateur operator licenses, permits examinations to be administered remotely, and allows amateur stations to transmit certain additional emission types.

Need for Correction

As published, the final regulations inadvertently deleted two sub-paragraphs of § 97.507(a) and needs to be corrected accordingly.

List of Subjects in 47 CFR Part 97

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 97 is corrected by making the following correcting amendments:

PART 97—AMATEUR RADIO SERVICE

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 2. Amend § 97.507 by adding paragraphs (a)(1) and (2) to read as follows:

§ 97.507 Preparing an examination.

(a) * * *

(1) Element 3: Advanced Class operator.

(2) Element 2: Advanced or General class operators.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2014–0017; FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AZ80

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2014–15 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of tribal authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest, at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2014.

ADDRESSES: You may inspect comments received on the special hunting regulations and tribal proposals during normal business hours U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803, or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 11, 2014, **Federal Register** (79 FR 46940), we proposed special migratory bird hunting regulations for the 2014–15 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. We have successfully used the guidelines since the 1985–86 hunting

season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]). In the April 30, 2014, **Federal Register** (79 FR 24512), we requested that tribes desiring special hunting regulations in the 2014–15 hunting season submit a proposal for our review.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. On August 11, 2014, we published a proposed rule (79 FR 46940) that included special migratory bird hunting regulations for 31 Indian tribes, based on the input we received in response to the April 30, 2014, proposed rule and previous rules. All the regulations contained in this final rule were either submitted by the tribes or approved by the tribes and follow our proposals in the August 11 proposed rule.

Although the August 11 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Therefore, it includes information for only 24 tribes. The letter designations for the paragraphs pertaining to each tribe in this rule are discontinuous because they follow the letter designations for the 31 tribes discussed in the August 11 proposed rule, which set forth paragraphs (a) through (ee). Late-season hunting will be addressed in late September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged doves. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

Information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds, including detailed information on methodologies and results, is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Comments and Issues Concerning Tribal Proposals

For the 2014–15 migratory bird hunting season, we proposed regulations for 31 tribes and/or Indian groups that followed the 1985 guidelines. Only 24 tribes were considered appropriate for this final rulemaking because we did not receive proposals from five of the tribes for whom we had proposed regulations. Some of the tribal proposals had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 24 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 11, 2014, closed on August 21, 2014. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 21, but not received prior to final action by us, in the September late-season final rule. At this time, we have received two comments.

Great Lakes Indian Fish and Wildlife Commission's (GLIFWC) Proposal

We received comments on GLIFWC's initial proposal from the Mississippi Flyway Council. The Mississippi Flyway Council recommended denial of GLIFWC's waterfowl hunting season requests regarding the use of electronic calls and extending shooting hours to 40 minutes before sunrise and after sunset. The Council recognized that tundra swans are a federally approved game species with a flyway management plan but are not hunted in this region of Minnesota, Wisconsin, and Michigan. In concept, the Council did not oppose a hunting season on swans but requested the tribal proposal follow the current management plan for the eastern population of tundra swans and that additional biological evaluation and harvest planning be conducted in cooperation with the State wildlife agencies and the Service.

Service Response: The GLIFWC 2014 proposal has several significant changes from regulations approved last season. In the 1837 and 1842 Treaty Areas, the GLIFWC proposal would allow the use of electronic calls; would extend shooting hours to 40 minutes before sunrise and after sunset in the 1837 and 1842 ceded territories; would allow the first hunting season of swans; and would remove restrictions on the use and placement of (non-living) decoys in Wisconsin.

GLIFWC states that the regulatory changes are intended to provide tribal members a harvest opportunity within the scope of rights reserved in their various treaties and increase tribal subsistence harvest opportunities, while protecting migratory bird populations. Under the GLIFWC's proposed regulations, GLIFWC expects total ceded territory harvest to be approximately 1,650 ducks, 375 geese, 20 sandhill cranes, and 20 swans, which is roughly similar to anticipated levels in previous years for those species for which seasons were established. GLIWFC further anticipates that tribal harvest will remain low given the small number of tribal hunters and the limited opportunity to harvest more than a small number of birds on most hunting trips.

Recent GLIFWC harvest surveys (1996–98, 2001, 2004, 2007–08, 2011, and 2012) indicate that tribal off-reservation waterfowl harvest has averaged fewer than 1,100 ducks and 250 geese annually. In the latest survey year for which we have specific results (2012), an estimated 86 hunters took an estimated 1,090 trips and harvested 1,799 ducks (1.7 ducks per trip) and 822 geese. Analysis of hunter survey data over 1996–2012 indicates a general downward trend in both harvest and hunter participation. While we acknowledge that tribal harvest and participation has declined in recent years, we do not believe that some of the GLIFWC's proposal for tribal waterfowl seasons on ceded lands in Wisconsin, Michigan, and Minnesota for the 2014–15 season is in the best interest of the conservation of migratory birds. While we acknowledge that tribal harvest and participation has declined in recent years, we do not believe that some of the GLIFWC's proposal for tribal waterfowl seasons on ceded lands in Wisconsin, Michigan, and Minnesota for the 2014–15 season is in the best interest of the conservation of migratory birds. More specific discussion follows below.

Allowing Electronic Calls

As we have stated the last three-years (76 FR 54676, September 1, 2011; 77 FR 54451, September 5, 2012; 78 FR 53218, August 28, 2013), the issue of allowing electronic calls and other electronic devices for migratory game bird hunting has been highly debated and highly controversial over the last 40 years, similar to other prohibited hunting methods such as baiting. Electronic calls, *i.e.,* the use or aid of recorded or electronic amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds to lure or attract migratory game birds to hunters, was Federally prohibited in 1957, because of their effectiveness in attracting and aiding the harvest of ducks and geese and are generally not considered a legitimate component of hunting. In 1999, after much debate, the migratory bird regulations were revised to allow the use of electronic calls for the take of light geese (lesser snow geese and Ross geese) during a light-goose-only season when all other waterfowl and crane hunting seasons, excluding falconry,

were closed (64 FR 7507, February 16, 1999; 64 FR 71236, December 20, 1999; 73 FR 65926, November 5, 2008). The regulations were also changed in 2006, to allow the use of electronic calls for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons, excluding falconry, were closed (71 FR 45964, August 10, 2006). In both instances, these changes were made in order to significantly increase the take of these species due to serious population overabundance, depredation issues, public health and safety issues, or a combination of these.

Available information from the use of additional hunting methods, such as electronic calls, during the special light-goose seasons indicate that total harvest increased approximately 50 to 69 percent. On specific days when light-goose special regulations were in effect, the mean light goose harvest increased 244 percent. One research study found that lesser snow goose flocks were 5.0 times more likely to fly within gun range (≤50 meters) in response to electronic calls than to traditional calls, and the mean number of snow geese killed per hour per hunter averaged 9.1 times greater for electronic calls than for traditional calls. While these results are only directly applicable to light geese, we believe these results are applicable to most waterfowl species, and indicative of some likely adverse harvest impacts on other geese and ducks.

Removal of the electronic call prohibition would be inconsistent with our long-standing conservation concerns. Given available evidence on the effectiveness of electronic calls, and the large biological uncertainty surrounding any widespread use of electronic calls, we believe the potential for overharvest could contribute to long-term population declines. Further, migratory patterns could be affected, and it is possible that hunter participation could increase beyond GLIFWC's estimates (50 percent) and could result in additional conservation impacts, particularly on locally breeding populations. Thus, we continue to not support allowing the use of electronic calls in the 1837 and 1842 Treaty Areas.

Additionally, given the fact that tribal waterfowl hunting covered by this proposal would occur on ceded lands that are not in the ownership of the Tribes, we believe the use of electronic calls to take waterfowl would lead to confusion on the part of the public, wildlife-management agencies, and law enforcement officials in implementing the requirements of 50 CFR part 20. Further, similar to the impacts of baiting, uncertainties concerning the zone of influence attributed to the use of electronic calls could potentially increase harvest from nontribal hunters operating within areas electronic calls are being used during the dates of the general hunt, thereby posing risks to the migratory patterns and distribution of migratory waterfowl.

Lastly, we remind GLIFWC that electronic calls generally are permitted for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons are closed (generally September 1–15 in the areas in question). However, in the case of GLIFWC's proposed seasons, electronic calls could be not used since GLIFWC has elected a September 1 duck season opener. This specific regulatory change was implemented in 2006, in order to significantly control resident Canada geese due to widespread population overabundance, depredation issues, and public health and safety issues.

Expanded Shooting Hours

Normally, shooting hours for migratory game birds are one-half hour before sunrise to sunset. A number of reasons and concerns have been cited for extending shooting hours past sunset. Potential impacts to some locally breeding populations (*e.g.,* wood ducks), hunter safety, difficulty of identifying birds, retrieval of downed birds, and impacts on law enforcement are some of the normal concerns raised when discussing potential expansions of shooting hours. However, despite these concerns, in 2007, we supported the expansion of shooting hours by 15 minutes after sunset in the 1837, 1842, and 1836 Treaty Areas (72 FR 58452, October 15, 2007). We had previously supported this expansion in other tribal areas and have not been made aware of any wide-scale problems. Further, at that time, we believed that the continuation of a specific species restriction within the daily bag limit for mallards, and the implementation of a species restriction within the daily bag limit for wood ducks, would allay potential conservation concerns for these species. We supported the increase with the understanding that the Tribe and we would closely monitor tribal harvest.

In 2012, in deference to tribal traditions and in the interest of cooperation, and in spite of our previously identified concerns regarding species identification, species conservation of locally breeding populations, retrieval of downed birds, hunter safety, and law enforcement impacts, we approved shooting 30 minutes after sunset (an extension of 15 minutes from the then-current 15 minutes after sunset) (77 FR 54451, September 5, 2012). This was consistent with other Tribes in the general area (Fond du Lac, Leech Lake, Oneida, Sault Ste Marie, and White Earth). Extending shooting hours on both the front end and the back end of the day to 40 minutes before sunrise and 40 minutes after sunset as GLIWFC has proposed would be contrary to public safety and only heightens our previously identified concerns. We see no viable remedies to allay our concerns. Shooting this early or late would also significantly increase the potential take of non-game birds. Thus, we cannot support increasing the shooting hours by an additional 10 minutes in the 1837 and 1842 Treaty Areas (to 40 minutes before sunrise and 40 minutes after sunset).

Swan Season

As we stated the last two years (77 FR 54451, September 5, 2012; 78 FR 53218, August 28, 2013), we are not opposed to the establishment of a tundra swan season in Wisconsin. Further, we are not conceptually opposed to the establishment of a general swan season. However, before the establishment of such a season in the ceded territory areas in question, we stated that there were several significant concerns and special considerations. We believe that GLIFWC has addressed those concerns with their current proposal.

First, the proposed areas in question are home to significant numbers of trumpeter swans. While the GLIFWC's proposed season is for both tundra and trumpeter swans, there are important differences that require careful consideration. Many cooperators, including GLIFWC, worked together to reestablish a breeding trumpeter swan population in the Great Lakes. These efforts have been largely successful with the removal of this species from Wisconsin's endangered species list in 2009. After a 25-year recovery program, there are currently about 200 breeding pairs in Wisconsin. Further, within Wisconsin, the northern ceded territory is an area of high trumpeter swan use containing over 80 percent of the breeding pairs. We believe it is best to avoid such areas with significant concentrations of trumpeter swans, and to focus hunting efforts in primary tundra swan migration and staging areas. Most such trumpeter swan areas are located outside of the ceded territories of northern Wisconsin.

To address concerns about the potential harvest of trumpeter swans by tribal hunters hunting during a general swan season, GLIFWC has proposed two

significant conditions. First, all harvested swans would have to be registered by presenting the fully-feathered carcass to a tribal registration station or GLIFWC warden. This requirement would allow the harvested bird to be identified to species. And secondly, that if the total number of trumpeter swans harvested reaches 10, the swan season would be closed by emergency tribal rule. Hunters would be expected to check GLIFWC's Web site each day they hunt to determine the current season status. We believe both of these proposed restrictions will significantly limit any potential impacts to trumpeter swans. Further, GLIWFC's proposal to not open the season until November 1, when they state that migrant swans have typically arrived into the ceded areas in appreciable numbers, contributes to alleviating our concerns regarding the potential take of trumpeter swans. GLIFWC anticipates a total swan harvest of less than 20 birds.

For these reasons, we believe that a tribal swan hunting season in the ceded territory should be implemented this year.

Remove Restrictions on Decoy Use in Wisconsin

In Wisconsin, State law requires that decoys may not be placed more than an hour before legal shooting hours or left out more than 20 minutes after legal shooting hours. As we stated in 2011 concerning a similar decoy restriction in Michigan (76 FR 54676, September 1, 2011), and in 2012 concerning this restriction (77 FR 54451, September 5, 2012), while we believe that there may be safety concerns with elimination of such a restriction, we take no position on the relative need or lack of need for such a restriction. Other than regulations on National Wildlife Refuges and other Federal lands, there are no Federal restrictions requiring the removal of unattended decoys.

Additionally, given the fact that tribal waterfowl hunting covered by this rule would occur on ceded lands that are not in the ownership of the Tribes, we believe the use of unattended decoys to ''reserve'' hunting areas in public waters (*i.e.,* those lands in the ceded territories outside of lands directly controlled by the Tribes) could lead to confusion and frustration on the part of the general public, hunters, wildlife-management agencies, and law enforcement officials due to the inherent difficulties of different sets of hunting regulations for different areas and groups of hunters. While we included GLIFWC's proposed language regarding the restriction in their General Conditions portion of their proposed regulations as a courtesy in the August 11 proposed rule, we view this issue as a Tribal–State issue. Thus, the Service takes no position on this issue and we have removed GLIFWC's proposed language from this final rule.

Oneida Tribe of Indians of Wisconsin's (Oneida) Proposal

We received one comment on the Oneida's proposal from the Village of Hobart, Wisconsin (Village) and one response to the Village's comments from the Oneida. The Village requested that the entire section regarding the Oneida's proposed regulations be removed, as applied to tribal members or non-tribal members upon fee lands within the Village of Hobart, since there is no Oneida ''reservation'' eligible for consideration of special migratory bird hunting regulations. The Village asserts that the Service does not have the power to overrule binding federal court decisions respecting the discontinuance of the former Oneida Reservation. The Village also asserts potential safety problems with hunting on Austin Straubel International Airport property.

Service Response: We have approved of Oneida's proposed regulations, or regulations similar to those proposed, since 1991. To our knowledge, this is the first time that the Village has opposed these special migratory bird hunting regulations. Also, to our knowledge, there have been no indications of conflicts (*e.g.,* arrests for trespass, etc.) on these lands during Oneida's hunting season since their inception in 1991. Similarly, we note that the Airport property is a fenced and secured facility so potential conflict is unlikely. Lastly, we disagree with the Village's assertions that the Oneida Reservation has been disestablished or diminished. Our position is consistent with the Department calling an election for the Oneida under Section 18 of the Indian Reorganization Act (''IRA'') and the Department's subsequent approval of its constitution under the IRA in 1936. For these reasons, we have decided to finalize Oneida's regulations as proposed. We encourage both the Village and Oneida to meet with us before special tribal regulations for the 2015–16 season are proposed in early 2015 if they still have questions related to the status of Oneida reservation and treaty rights; and to address any perceived conflicts with Oneida's hunting activity.

National Environmental Policy Act (NEPA)

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2014–15,'' with its corresponding August 2014, finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . .'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant

rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in **Regulatory Flexibility Act** section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2014–15 season, we have also chosen alternative 3. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, and the 2012–13 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0010—Mourning Dove Call Count Survey (discontinued 7/29/2014).
- 1018–0019—North American Woodcock Singing Ground Survey (expires 4/30/2015).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 30 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2014–15 migratory bird hunting season. The resulting proposals were contained in a separate August 11, 2014,

proposed rule (79 FR 46940). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect less than 30 days after the date of publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

Unless specifically provided for below, all of the regulations contained in 50 CFR part 20 apply to the seasons listed herein.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters).

Doves

Season Dates: Open September 1 through 15, 2014; then open November 8 through December 22, 2014.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits after the first day of the season.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona. The early season will be open from one-half hour before sunrise until noon. For the late season, shooting hours are from one-half hour before sunrise to sunset.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Hunters).

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2014, through March 9, 2015.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).

Ducks

1854 and 1837 Ceded Territories:

Season Dates: Begin September 13 and end November 30, 2014.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 9 black ducks, 9 scaup, 9 wood ducks, 9 redheads, 9 pintails, and 9 canvasbacks.

Reservation:

Season Dates: Begin September 1 and end November 24, 2014.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 6 black ducks, 6 scaup, 6 redheads, 6 pintails, 6 wood ducks, and 6 canvasbacks.

Mergansers

1854 and 1837 Ceded Territories:

Season Dates: Begin September 13 and end November 30, 2014.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

Reservation:

Season Dates: Begin September 1 and end November 24, 2014.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2014.

Daily Bag Limit: 20 geese.

Reservation:

Season Dates: Begin September 1 and end November 24, 2014.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules)

1854 and 1837 Ceded Territories:

Season Dates: Begin September 13 and end November 30, 2014.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Reservation:

Season Dates: Begin September 1 and end November 24, 2014.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sandhill Cranes

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2014.

Daily Bag Limit: One sandhill crane. Crane carcass tags are required prior to hunting.

Sora and Virginia Rails

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2014.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Reservation:

Season Dates: Begin September 1 and end November 24, 2014.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2014.

Daily Bag Limit: Eight common snipe.

Reservation:

Season Dates: Begin September 1 and end November 24, 2014.

Daily Bag Limit: Eight common snipe.

Woodcock

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2014.

Daily Bag Limit: Three woodcock.

Reservation:

Season Dates: Begin September 1 and end November 25, 2014.

Daily Bag Limit: Three woodcock.

Mourning Doves

1854 and 1837 Ceded Territories:

Season Dates: Begin September 1 and end November 30, 2014.

Daily Bag Limit: 30 mourning doves.

Reservation:

Season Dates: Begin September 1 and end October 30, 2014.

Daily Bag Limit: 30 mourning doves.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. These regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2014, through January 15, 2015.

Daily Bag Limit: 20 ducks, which may include no more than 5 pintail, 3 canvasback, 5 black ducks, 1 hooded merganser, 5 wood ducks, 3 redheads, and 9 mallards (only 4 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1 through November 30, 2014; and open January 1, 2015, through February 8, 2015.

Daily Bag Limit: 10 geese.

Other Geese (White-Fronted Geese and Brant)

Season Dates: Open September 20 through November 30, 2014.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1 through November 14, 2014.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: Open September 1 through November 14, 2014.

Daily Bag Limit: 10 mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).

The 2014–15 waterfowl hunting season regulations apply to all treaty areas (except where noted):

Ducks

Season Dates: Begin September 1 and end December 31, 2014.

Daily Bag Limit: 1837 and 1842 Ceded Territories: 50 ducks.

1836 Ceded Territory: 30 ducks.

Mergansers

Season Dates: Begin September 1 and end December 31, 2014.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2014. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 31 will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 1 and end December 31, 2014.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 1 and end December 31, 2014.

Daily Bag and Possession Limits: 20 sora and Virginia rails, singly or in the aggregate, 25.

Common Snipe

Season Dates: Begin September 1 and end December 31, 2014.

Daily Bag Limit: 16 common snipe.

Woodcock

Season Dates: Begin September 2 and end December 31, 2014.

Daily Bag Limit: 10 woodcock.

Mourning Doves

1837 and 1842 Ceded Territories:

Season Dates: Begin September 1 and end November 9, 2014.

Daily Bag Limit: 15 doves.

Sandhill Cranes

1837 and 1842 Ceded Territories Only:

Season Dates: Begin September 1 and end December 31, 2014.

Daily Bag Limit: 2 cranes.

Swans

1837 and 1842 Ceded Territories Only:

Season Dates: Begin November 1 and end December 31, 2014.

Daily Bag Limit: 2 swans.

Additional Restrictions: All harvested swans must be registered by presenting the fully-feathered carcass to a tribal registration station or GLIFWC warden. If the total number of trumpeter swans harvested reaches 10, the swan season will close by emergency tribal rule.

General Conditions

A. All tribal members are required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members are required to comply with tribal codes that are no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations

C. Particular regulations of note include:

1. Nontoxic shot is required for all waterfowl hunting by tribal members.

2. Tribal members in each zone must comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. There are no possession limits, with the exception of 2 swans (in the aggregate) and 25 rails (in the aggregate). For purposes of enforcing bag limits, all migratory birds in the possession and custody of tribal members on ceded lands are considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands do not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective section 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for nontribal members as published at 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective section 10.05(2)(b) of the model ceded territory conservation codes will be removed.

6. Hunting hours are from one-half hour before sunrise to one-half hour after sunset.

(f) [Reserved.]

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 6 through September 14, 2014, for the early-season, and open October 1, 2014, through January 20, 2015, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Ducks

Season Dates: Open September 20, through September 22, 2014, and open September 27 through September 29, 2014, for the early-season, and open October 1, 2014, through January 20, 2015, for the late-season.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 20, 2014, through January 20, 2015.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 6, 2014, through January 20, 2015.

Daily Bag Limit: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(h) [Reserved.]

(i) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).

Ducks

Season Dates: Open September 13 through December 31, 2014.

Daily Bag Limits: 10 ducks, including no more than 5 pintail, 5 canvasback, and 5 black ducks.

Geese

Season Dates: Open September 1 through December 31, 2014.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(j) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).

1836 Ceded Territory and Tribal Reservation:

Ducks

Season Dates: Open September 12, 2014, through January 25, 2015.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (2 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Canada Geese

Season Dates: Open September 1, 2014, through February 8, 2015.

Daily Bag Limit: Five.

White-Fronted Geese, Brant, and Snow Geese

Season Dates: Open September 19 through November 30, 2014.
Daily Bag Limit: Five.

Woodcock, Mourning Doves, Snipe, and Sora and Virginia Rails

Season Dates: Open September 1 through November 14, 2014.
Daily Bag Limit: 5 woodcock and 10 each of the other species.
General: Possession limits are twice the daily bag limits.

(k) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).

Ducks

Season Dates: Open September 15, 2014, through January 31, 2015.
Daily Bag Limits: 20 ducks, including no more than 5 hen mallards, 5 black ducks, 5 redheads, 5 wood ducks, 5 pintail, 5 scaup, and 5 canvasback.

Mergansers

Season Dates: Open September 15, 2014, through January 31, 2015.
Daily Bag Limits: 10 mergansers, including no more than 5 hooded mergansers.

Coots and Gallinules

Season Dates: Open September 15 through December 31, 2014.
Daily Bag Limit: 20.

Canada Geese

Season Dates: Open September 1, 2014, through February 8, 2015.
Daily Bag Limit: 20 in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2014.
Daily Bag Limit: 20.

Snipe

Season Dates: Open September 1 through December 31, 2014.
Daily Bag Limit: 16.

Mourning Doves

Season Dates: Open September 1 through November 14, 2014.
Daily Bag Limit: 15.

Woodcock

Season Dates: Open September 1 through December 1, 2014.
Daily Bag Limit: 10.

Sandhill Cranes

Season Dates: Open September 1 through December 1, 2014.
Daily Bag Limit: 1.
General: Possession limits are twice the daily bag limits.

(l) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).

Tribal Members

Ducks, Mergansers, and Coots

Season Dates: Open September 1, 2014, through March 10, 2015.
Daily Bag and Possession Limits: Six ducks, including no more five mallards (only two of which may be hens), three scaup, one mottled duck, two redheads, three wood ducks, two canvasback, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2014, through March 10, 2015.
Daily Bag and Possession Limits: 6 and 18, respectively.

White-Fronted Geese

Season Dates: Open September 1, 2014, through March 10, 2015.
Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open September 1, 2014, through March 10, 2015.
Daily Bag Limit: 20.
General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

(m) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 13, 2014, through January 4, 2015.
Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 13, 2014, through January 4, 2015.
Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The seasons on Aleutian Canada geese and brant are closed. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 13, 2014, through January 4, 2015.
Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 1, 2014, through January 11, 2015.
Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 13, 2014, through January 4, 2015.
Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, 2014, through January 11, 2015.
Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.
General: Tribal members must possess a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

(n) Makah Indian Tribe, Neah Bay, Washington (Tribal Members).

Band-Tailed Pigeons

Season Dates: Open September 13 through October 26, 2014.
Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 27, 2014, through January 25, 2015.
Daily Bag Limit: Seven ducks including no more than five mallards (only two of which can be a hen), one redhead, one pintail, three scaup, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 27, 2014, through January 25, 2015.
Daily Bag Limit: Four, including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.

General

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area.

(2) Hunters must be eligible, enrolled Makah tribal members and must carry

their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation.

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited.

(6) The use of dogs is permitted to hunt waterfowl.

(7) Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half hour after sunset.

(8) Open hunting areas are: GMUs 601 (Hoko), a portion of the 602 (Dickey) encompassing the area north of a line between Norwegian Memorial and east to Highway 101, and 603 (Pysht).

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).

Band-Tailed Pigeons

Season Dates: Open September 1 through 30, 2014.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through 30, 2014.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).

Ducks (Including Mergansers)

Season Dates: Open September 20 through November 21, 2014, and open December 1 through December 7, 2014.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1 through November 21, 2014; and open December 1 through December 31, 2014.

Daily Bag and Possession Limits: 5 and 10 Canada geese, respectively, from September 1 through November 21, 2014, and December 1 through 31, 2014. Hunters will be issued five tribal tags for geese in order to monitor goose harvest. An additional five tags will be issued each time birds are registered. A seasonal quota of 500 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 6 through November 2, 2014.

Daily Bag and Possession Limits: Two and four woodcock, respectively.

Doves

Season Dates: Open September 6 through November 2, 2014.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits, which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(q) Point No Point Treaty Council, Kingston, Washington (Tribal Members Only).

Jamestown S'Klallam Tribe

Ducks

Season Dates: Open September 13, 2014, through February 1, 2015.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scoters, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 9, 2014, through March 10, 2015.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 10 through January 25, 2015.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 13, 2014, through February 1, 2015.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 13, 2014, through January 18, 2015.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 13, 2014, through March 10, 2015.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 13, 2014, through January 18, 2015.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

Port Gamble S'Klallam Tribe

Ducks

Season Dates: Open September 2, 2014, through January 31, 2015.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scoters, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 14, 2014, through March 9, 2015.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 9, 2014, through January 31, 2015.

Daily Bag and Possession Limits: 2 and 4, respectively.

Coots

Season Dates: Open September 2, 2014, through January 31, 2015.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 2, 2014, through January 31, 2015.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 2, 2014, through March 10, 2015.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 2, 2014, through March 9, 2015.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Point No Point Tribal Council pursuant to tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(r) The Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Mt. Pleasant, Michigan (Tribal Members Only)

Mourning Doves

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 25 doves.

Ducks

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limits: 20, including no more than five hen, 5 canvasback, 5 black duck, and 5 wood duck.

Mergansers

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 10 in the aggregate.

Canada Geese

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 15, 2014, through December 31, 2014.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1, 2014, through January 31, 2015.

Daily Bag Limits: 20 in the aggregate.

General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(s) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).

Mourning Doves

Season Dates: Open September 1 through November 14, 2014.

Daily Bag Limit: 10 doves.

Ducks

Season Dates: Open September 15 through December 31, 2014.

Daily Bag Limits: 20, including no more than 10 mallards (only 5 of which may be hens), 5 canvasback, 5 black duck, and 5 wood duck.

Mergansers

Season Dates: Open September 15 through December 31, 2014.

Daily Bag Limit: 10 in the aggregate.

Geese

Season Dates: Open September 1 through December 31, 2014.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1 through December 31, 2014.

Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 2 through December 1, 2014.

Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 15 through December 31, 2014.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1 through December 31, 2014.

Daily Bag Limits: 20 in the aggregate.

General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(t) [Reserved.]

(u) [Reserved.]

(v) Spokane Tribe of Indians, Spokane Indian Reservation and Ceded Lands, Wellpinit, Washington (Tribal Members Only).

Ducks

Season Dates: Open September 2, 2014, through January 31, 2015.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, one canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 2, 2014, through January 31, 2015.

Daily Bag and Possession Limits: Four dark geese and six light geese. Possession limit is twice the daily bag limit.

General Conditions: All tribal hunters must have a valid Tribal identification card on his or her person while hunting. Shooting hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(w) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 1, 2014, through January 15, 2015.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2014, through January 15, 2015.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1 through December 31, 2014.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2014, through January 15, 2015.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2014, and through January 15, 2015.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, through December 31, 2014.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(x) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).

Band-Tailed Pigeons

Season Dates: Open September 1 through October 31, 2014.

Daily Bag and Possession Limits: Four and eight, respectively.

Mourning Doves

Season Dates: Open September 1 through October 31, 2014.

Daily Bag and Possession Limits: 10 and 20, respectively.

Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(y) [Reserved.]

(z) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members Only).

Ducks and Mergansers

Season Dates: Open September 3, 2014, through February 28, 2015.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, one canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 3, 2014, through February 28, 2015.

Daily Bag and Possession Limits: Seven geese. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 3, 2014, through February 28, 2015.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 3, 2014, through February 28, 2015.

Daily Bag and Possession Limits: 25 and 25 coots, respectively.

Snipe

Season Dates: Open September 3, 2014, through February 28, 2015.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: All tribal hunters must have a valid Tribal identification card on his or her person while hunting. All nontribal hunters must obtain and possess while hunting a valid Tulalip Tribe hunting permit and be accompanied by a Tulalip Tribal member. Shooting hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(aa) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).

Mourning Doves

Season Dates: Open September 1 through December 31, 2014.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(bb) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).

Canada Geese

Season Dates: Open September 3 through 20, 2014, and open October 27, 2014, through February 21, 2015.

Daily Bag Limits: Eight Canada geese.

Snow Geese

Season Dates: Open September 3 through 20, 2014, and open November 24, 2014, through February 21, 2015.

Daily Bag Limits: 15 snow geese.

Sora and Virginia Rails

Season Dates: Open September 1 through November 10, 2014.

Daily Bag Limits: 5 sora and 10 Virginia Rails.

Snipe

Season Dates: Open September 1 through December 13, 2014.

Daily Bag Limits: Eight snipe.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(cc) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).

Ducks

Season Dates: Open September 13 through December 14, 2014.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 female mallards, 1 pintail, and 1 canvasback.

Mergansers

Season Dates: Open September 13 through December 14, 2014.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1 through December 14, 2014.

Daily Bag Limit: Eight geese through September 21 and five thereafter.

Coots

Season Dates: Open September 13 through December 14, 2014.

Daily Bag Limit: 20 coots.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(dd) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1 through 15, 2014.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through 15, 2014.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons

and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

(ee) [Reserved.]

Dated: August 26, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–20841 Filed 8–28–14; 11:15 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 79, No. 170
Wednesday, September 3, 2014

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 AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 763, 764, 765, 766, 767, 770, 772, 773, 774, and 799

Commodity Credit Corporation

7 CFR Part 1436

Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency

7 CFR Part 1940

RIN 0560–AH02

Environmental Policies and Procedures; Compliance with the National Environmental Policy Act and Related Authorities

AGENCY: Farm Service Agency, Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to consolidate, update, and amend its regulations implementing the National Environmental Policy Act of 1969, as amended (NEPA). FSA's NEPA regulations have been in place since 1980. Significant changes to the structure of FSA and the scope of FSA's programs require changes in FSA's NEPA regulations. The proposed changes would also better align FSA's NEPA regulations with the President's Council on Environmental Quality (CEQ) NEPA regulations and guidance and meet the FSA responsibilities for periodic review of their categorical exclusions. One component of the changes proposed to improve the clarity and consistency of the regulations, is the proposed additions to the existing list of categorical exclusions (CatExs). CatExs involve actions that typically do not result in individual or cumulative significant environmental effects or impacts and therefore do not merit further environmental review in an Environmental Assessment (EA) or Environmental Impact Statement (EIS). This proposed rule would also propose to expand and clarify the list of actions that require an EA. In addition, this rule proposes conforming changes to existing references to FSA NEPA regulations in other current USDA regulations. The revisions to the FSA NEPA implementing regulations are intended to improve transparency and clarity of the FSA NEPA process for FSA program participants and to provide for a more efficient environmental review that will lead to better decisions and outcomes for stakeholders and the environment.

DATES: We will consider comments that we receive by December 2, 2014.

ADDRESSES: We invite you to submit comments on this proposed rule and the information collection. In your comment, specify RIN 0560–AH02 and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* Nell Fuller, Conservation and Environmental Program Division, FSA, USDA, Mail Stop 0513, 1400 Independence Avenue SW., Washington, DC 20250–0513.

FSA will post all comments received without change, including any personal information that is included with the comments, on *http://www.regulations.gov.* Comments will be available for inspection online at *http://www.regulations.gov* and at the address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is also available through the FSA homepage at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Nell Fuller; telephone (202) 720–6303. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720–2600.

SUPPLEMENTARY INFORMATION:

Background—NEPA

NEPA (Pub. L. 91–190, 42 U.S.C. 4321–4370) establishes a national environmental policy, sets goals for the protection, maintenance, and enhancement of the environment and provides a process for carrying out the policy and working toward those policy goals. The NEPA process requires different levels of environmental review and analysis of Federal agency actions, depending on the nature of the action. As stated in 40 CFR 1508.18(a), actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Some actions, because of the nature of their potential environmental effects are categorically excluded from further environmental analysis and are known as CatExs. If an action is not categorically excluded, additional review will be performed either through an EA, or, where the circumstances warrant, a more rigorous EIS to ensure that the additional time and analysis is both expeditious and serves to better inform the decision at hand. Rules specifying the requirements for NEPA analysis are in government-wide NEPA regulations issued by CEQ and available at 40 CFR parts 1500 through 1508, and in individual agency regulations, including the Department of Agriculture's NEPA implementing regulations (7 CFR part 1b). The scope of this proposed rule is to update the FSA NEPA implementing regulations.

A CatEx is used typically for actions that do not have a significant impact on the quality of the human environment, such as a farm loan consolidation or funding for the maintenance of existing buildings. The general NEPA regulations define the human environment as ''the natural and physical environment, and the relationship of people with that environment'' (40 CFR 1508.14). Individual actions are not categorically excluded by this rulemaking; in the future, those actions that fit into a specific category can be categorically excluded if there are no extraordinary circumstances for the specific proposed action at hand. If an action is not in a categorically excluded category, then the next step in the NEPA process is usually an EA. An EA is prepared to analyze the potential environmental impact of a Federal agency action and

alternatives to the action to determine whether proposed actions can proceed without supplemental environmental review. An EA can result in a proposal not proceeding, a Finding of No Significant Impact (FONSI), or a determination that the environmental impact will be significant and therefore an EIS is required. If the agency determines at an early stage that there is clearly the potential for significant environmental impact, FSA can start the EIS process without first doing an EA.

NEPA requires a Federal agency to prepare an EIS for any major Federal action that significantly affects the quality of the human environment (see 42 U.S.C. 4332(c)). The criteria for what constitutes a ''major Federal action significantly affecting the quality of the human environment'' are specified in the general NEPA regulations that apply to all Federal agencies in 40 CFR 1508.18. The EIS must include a detailed evaluation of:

(1) The environmental impact of the proposed action;

(2) Any adverse environmental effects that cannot be avoided;

(3) Alternatives to the proposed action;

(4) The relationship between the local, short-term resource uses and the maintenance and enhancement of long-term ecosystem productivity; and

(5) Any irreversible and irretrievable commitments of resources.

NEPA requires that the environmental evaluation must be started once a proposal to take an action is concrete enough to warrant analysis and must be completed at the earliest possible time to ensure that planning and implementation decisions reflect environmental values. The NEPA review informs the decision maker and the public, and must be completed before a decision is made.

NEPA also establishes the President's Council on Environmental Quality (CEQ). Executive Order 11514, ''Protection and Enhancement of Environmental Quality,'' as amended by Executive Order 11991, ''Relating to Protection and Enhancement of Environmental Quality,'' directs the CEQ to prepare binding regulations governing how Federal agencies are to implement NEPA. The CEQ NEPA regulations (40 CFR parts 1500–1508) provide this general regulatory framework.

The CEQ NEPA regulations require every Federal agency to develop agency-specific procedures for implementing NEPA. Each Federal agency's NEPA implementing procedures supplement the CEQ regulations to address the agency's specific environmental review needs. This proposed rule supplements the CEQ's NEPA regulations, and the USDA general NEPA regulations at 7 CFR part 1b, addressing their implementation by FSA.

Background—FSA Organizational History

FSA was created in 1995 by merging the former Agricultural Stabilization and Conservation Service (ASCS) and the farm loan portion of the Farmers Home Administration (FmHA); currently the Farm Programs and Farm Loan Programs, respectively. (As required by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).) Since that reorganization, FSA has been operating under two separate sets of NEPA regulations, one for the programs within the scope of the former ASCS and one for programs within the scope of the former FmHA. This proposed rule would consolidate, clarify, and update FSA NEPA regulations to establish a single set of NEPA regulations for FSA, and so that those regulations reflect current FSA organizational structure, environmental laws, Executive Orders, and CEQ guidance and policy.

FSA's scope also includes field operations and commodity warehouse activities that were included in the scope of the former ASCS. These activities are categorically excluded as inventory, informational, or administrative actions under USDA's general NEPA implementing rules in 7 CFR part 1b and those CatExs would continue to be available for application by the FSA. This rule would not change the USDA department-wide CatExs that would apply to FSA programs that solely involve those actions or similar actions identified in 7 CFR 1b.3.

Current Structure of NEPA Regulations That Apply to FSA; Proposed Restructuring

The Farm Programs part of FSA oversees conservation, disaster assistance, direct and countercyclical payments, price support, farm storage facility loans, and commodity loan programs. Currently, the NEPA regulations governing FSA Farm Programs are in 7 CFR part 799. Many current FSA programs did not exist in 1980 and are therefore not specifically addressed under the current NEPA regulations in 7 CFR part 799.

The Farm Loan Programs part of FSA is responsible for providing direct farm loans, guaranteed farm loans, and land contract guaranteed loans. Currently, the NEPA regulations governing Farm Loan Programs are at 7 CFR part 1940, subpart G, and apply to FSA farm loans and to other USDA activities associated with the Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, (also formerly part of FmHA). These regulations contain provisions that refer to programs that either no longer exist or are not FSA programs.

FSA is responsible for NEPA compliance for the Commodity Credit Corporation (CCC) programs that FSA administers. FSA currently has no separate NEPA regulations for CCC; existing FSA NEPA regulations in 7 CFR part 799 apply for CCC programs that are administered by FSA. Those will be included in this rule.

The proposed rule would implement a single consolidated set of FSA NEPA regulations in 7 CFR part 799. As a result, the regulations in 7 CFR part 1940, subpart G, would no longer apply to FSA, and would be amended accordingly. The proposed changes are intended to improve clarity in the regulations, allow more efficient program implementation at the field level, provide more openness and transparency during FSA's environmental decision-making, and simplify program administration.

The revised part 799 would have six subparts, titled ''General FSA Implementing Regulations for NEPA,'' ''FSA and Program Participant Responsibilities,'' Environmental Screening Worksheet,'' ''Categorical Exclusions,'' ''Environmental Assessments,'' and ''Environmental Impact Statements.'' The ''FSA and Program Participant Responsibilities'' subpart would include a summary chart of the entire FSA NEPA process.

Following the discussion of the regulatory changes, a summary table provides a general comparison of the major NEPA provisions, the current regulations, and the proposed regulation. In general, FSA has already administratively implemented FSA NEPA procedures to meet current NEPA requirements as specified in Executive Orders and CEQ guidance; those currently implemented FSA NEPA procedures are reflected in this rule as proposed changes to the regulation. For example, Programmatic EAs (PEAs) are not in the current regulations, but FSA already does such analyses in compliance with current CEQ regulations and guidance. So, the proposed provisions for PEAs represent a revision to the regulations, which specifically authorize and further explain FSA NEPA procedures. A detailed crosswalk comparing the specific regulatory changes between the current FSA regulations and the

proposed regulations would not accurately reflect the changes in FSA NEPA procedures that would impact the public. Combining the requirements from the existing 7 CFR parts 799 and 1940 involved significant editing and restructuring. This resulted in proposed regulations that are significantly rewritten, but the underlying FSA NEPA procedures remain largely unchanged. Therefore, the summary table highlights the substantive procedure changes, rather than the detailed editorial restructuring and removal of obsolete provisions. This table is intended to provide a quick comparison of the major NEPA provisions and show how they are treated in both the current regulations and the proposed regulation to clarify the actual changes that will have an impact on the public and the actions that FSA funds.

The CEQ regulations require that Federal agencies implement NEPA procedures, in part to ''reduce paperwork and the accumulation of extraneous background data and to emphasize real environmental issues and alternatives'' (40 CFR 1500.2(b)). FSA believes that the proposed changes will meet that requirement, by clarifying the procedures for completing EAs and EISs, and by expanding and making the CatEx list more specific. The changes will significantly reduce paperwork and allow FSA to focus limited resources on real environmental issues and alternatives for other actions, as appropriate.

Emergency circumstances will continue to be handled consistent with 40 CFR 1506.11 and applicable CEQ guidance.

Environmental Screening Worksheet

This rule includes procedures to increase transparency and accountability of FSA's NEPA process. One of those procedures is a new worksheet that will be used to assess the need for, and extent of, NEPA evaluations for all FSA programs. This proposed rule describes the use of the new environmental screening worksheet (ESW) in the revised 7 CFR part 799, subpart C. ESW and the process for using it would represent a substantive change from current practice. Implementation of the ESW would consolidate two forms required by 7 CFR parts 799 and 1940, subpart G, reducing total paperwork and ensuring better compliance with NEPA. FSA staff would use the ESW as an initial screening tool to evaluate and document any likely environmental impacts of proposed actions and determine the potential significance and appropriate level of NEPA review (CatEx, EA, or EIS). For some types of CatEx, completion of the ESW will identify the CatEx being considered and document the determination whether extraordinary circumstances exist, and will determine whether the CatEx is appropriately applied or further NEPA review of that proposed action is appropriate. The new ESW consolidates the evaluation criteria from multiple forms and checklists currently used by FSA for environmental evaluation. Having one form will reduce the paperwork for FSA and ensure compliance with NEPA.

As proposed, 7 CFR part 799, subpart C, specifies the categories of actions that would require the use of the ESW and how the ESW would be used. In general, the ESW would be required for all actions except those CatExs listed in § 799.31, which FSA has determined do not require further documentation (beyond that provided in the substantiation for establishing the CatEx and the project file) for specific proposed actions. An administrative record was created, in consultation with CEQ, to substantiate the CatExs in this rule. The administrative record includes benchmarking CatExs by other government agencies and documentation from previous FSA NEPA analysis of these types of actions.

The next section of this document explains the new categories of CatExs, some of which require an ESW. Some examples of CatEx actions proposed in § 799.31 that would not require an ESW include many loan actions, fence repair, and maintenance of existing buildings. The list of actions specified in § 799.32 of this rule may be categorically excluded depending on the outcome of the review documented in the ESW. Those CatEx actions would require an ESW to determine if extraordinary circumstances exist that require further environmental analysis. Some examples of these actions that would be analyzed with an ESW include loan transfers with planned new land disturbance and fence installation.

Extraordinary circumstances, as specified in this proposed rule, are considered in the context of a specific action and include situations with potentially significant impacts. If such circumstances do exist, then an EA is required for an action that would otherwise be categorically excluded.

In addition to its use for NEPA review, the ESW would also be required for a list of specific actions, specified in § 799.34, that FSA has determined may have the potential to affect historic properties. This includes actions such as operating loans for construction and well drilling.

For all actions for which there is no applicable CatEx, the ESW would be used to determine whether an EA or an EIS is the next step in the NEPA process.

USDA agencies and other Federal agencies have similar environmental screening tools (for example, USDA's Natural Resources Conservation Service (NRCS) and Rural Development, the Department of Energy, the Department of Defense). FSA reviewed those screening tools and considered these agencies' approaches during development of the ESW.

The ESW would replace the existing form FSA 850 ''Environmental Evaluation Checklist'' document and the RD 1940–22, which local FSA staff and County Office Committee reviewers have found to be somewhat lengthy, confusing, and duplicative paperwork. Due to its length and complexity, the existing checklist has been used inconsistently. The new, more concise ESW is designed to be applied consistently.

This proposed rule specifies the situations in which the ESW would be used by FSA. The ESW would be completed by FSA field office personnel during the review of an application for any FSA program, unless the program is categorically excluded from further NEPA analysis without documentation in an ESW, or FSA receives technical assistance with the environmental evaluation from USDA or another Federal agency that can be used in place of the ESW. For example, FSA often receives technical assistance from NRCS, which uses its own evaluation form. The NRCS form provides the same information as the ESW and therefore is used instead of the ESW when NRCS supplies FSA technical assistance. The use of the new FSA ESW as specified in this rule is expected to make overall action planning, and project-specific environmental reviews, more timely and cost effective. It is also expected to provide more clarity and transparency to the environmental review process.

CatEx Changes

This proposed rule would update and clarify the CatEx requirements that apply to FSA programs and group those requirements in a new subpart. Consistent with CEQ regulations, subpart D of the proposed rule specifies that a ''categorical exclusion'' is a category of agency actions that normally have no individually or cumulatively significant effect on the human environment (see 7 CFR 799.30). Subpart D would provide a longer and more specific list of categorically excluded actions than is in the current

regulations (see 7 CFR 799.31 and 799.32). The updated and expanded list of CatExs represents a substantive change. Many of the actions proposed in this rule as CatExs are not explicitly listed as CatExs in the current FSA NEPA regulation, but have been considered as CatExs under the Departmental regulations (for example 7 CFR part 1b(3)(a)(2) activities which deal solely with funding programs). In the past, some program regulations should have been categorically excluded, but were not; this rule requests public comment on all of the proposed CatExs and proposes to add all such actions that should have been categorically excluded in the FSA NEPA regulations. Adding the specific list of CatExs to the FSA NEPA regulation adds clarity and transparency to the NEPA process by consolidating all FSA CatExs in a single regulation and by providing an opportunity for public comment on the CatExs in this proposed rule.

Some of the proposed CatExs are similar to the CatExs of other Federal agencies and reflect FSA's experience with similar factual circumstances. For example, the action of ''fencing'' is an action that FSA has categorized as a CatEx that also has been identified as a CatEx by other agencies, such as the Department of Energy, in their NEPA implementing regulations. It has also been documented in several FSA EISs for the Emergency Conservation Program to have no significant impact on the environment. Other new CatExs are more specific to FSA and reflect FSA's past experience with similar factual circumstances. These CatExs have been found to have no potential to produce significant environmental impacts on the human environment based on past NEPA documentation by FSA environmental experts and their review of the impacts for implementing those actions. For example, many of the loan program actions conducted by FSA such as refinancing, closing cost payments, and deferral of loan payments, have been shown consistently to have no potential to significantly impact the human environment as a result of the FSA action. In addition, those actions are categorically excluded in 7 CFR 1940.310(e)(2) as loan-closing and servicing activities.

There are many CatExs proposed in this rule on the basis of the location where the specific actions would be occurring. For example, various actions that would take place within previously disturbed or developed farmland, and actions on land where the former state of the area and its ecological functions have already been altered, are appropriate for a CatEx. These would also include actions on land that has been previously cultivated, as long as the proposed new action would not disturb below the plow zone or amount to very limited disturbance. The Department of Energy uses this same previously disturbed ground criteria as an integral component of their CatExs.

FSA proposes to separate its actions into three broad categories with regards to categorical exclusion and any further required environmental review. As explained below, these are actions that (1) are automatically excluded from further environmental review without further documentation, (2) may be excluded from further environmental review based on the result of the ESW, and (3) are not excluded and require further environmental review (EA or EIS):

- First, those actions that would be categorically excluded from further environmental review without documentation. There are a total of 71 of these types of actions proposed in this rule and include actions such as paying loan closing costs, refinancing debt, and a payment to support commodity prices with no requirement for any action on part of the recipient. Most of these type of actions would also not be considered as undertakings that have potential to affect a historic property and therefore would not be subject to section 106 of the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470f). FSA may also add CatExs to the regulations in the future. As specified in this rule, and discussed below future CatExs would be proposed in the **Federal Register** with an opportunity for public comment (see § 799.35 and 40 CFR 1507.3). FSA will consult with CEQ on any new CatExs prior to publication, as is the normal process for establishing CatExs, and as was done with this rule.
- Second, those actions that would be considered as CatExs so long as they are documented with an ESW. Extraordinary circumstances, as specified in this proposed rule, are unique to a specific action and include situations where an action has potentially significant impacts. The presence or absence of such extraordinary circumstances would be determined by the completion of the ESW. There are a total of 21 of these actions proposed in this rule, including actions such as loans for livestock purchases, construction in previously disturbed areas, grading, shaping, leveling, and refilling. These are categories of actions where such extraordinary circumstances with the potential for environmental impact have rarely resulted in potentially significant effects. In addition, most of these actions are not considered as undertakings that have the potential to affect a historic property and therefore would not be subject to section 106 of the NHPA.
- Third, those actions that typically have the potential to have a significant impact on the human environment but for which, as a general matter, mitigation measures can be applied to decrease the level of significance to support a Finding of No Significant Impact. For those actions an environmental review in the form of an EA or EIS will be required and a CatEx would not be considered. These would be analyzed by completing the ESW and using the results to determine the need for an EA or an EIS. There are a total of 47 of these actions and include actions such as pond planning and construction, dike planning and construction, and operating loans for actions with demolition or construction planned. If a property is deemed historic, these actions are also considered as undertakings that have the potential to affect a historic property and would be subject to section 106 of NHPA. Consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Tribal governments, and the public will be conducted as appropriate based on the location, nature, and scale of the action.

As specified in § 799.35 of this proposed rule, the CEQ regulations at 40 CFR 1507.3, and in CEQ guidance on ''Establishing, Applying and Revising Categorical Exclusions under the National Environmental Policy Act (NEPA)'' and published in the **Federal Register** on December 6, 2010 (75 FR 75628–75638), FSA is required to publish a document in the **Federal Register** to announce new CatExs. The document must provide no less than 30 days for public review and comment. This proposed rule serves as the notice of the new CatExs proposed in this rule, and comments are requested for a 90-day period on all of the proposed rule, including the CatExs specified in §§ 799.31 and 799.32.

The inclusion in the regulations of CatExs that were previously not explicitly listed as CatExs in the current FSA NEPA regulations but were previously documented as CatExs in their corresponding program regulations and FSA handbooks will increase transparency and clarity of FSA's NEPA process. The new CatExs added with this rule, and the new ESW, will reduce the time and effort required for the

environmental evaluation of actions that in the past required an EA, but almost always resulted in a FONSI as the result of the EA.

EA Changes

The current FSA NEPA regulations in 7 CFR part 1940, subpart G, have two categories of Environmental Assessments (Class I and Class II). As currently specified by CEQ, there is no variation on EA requirements, for example, a checklist does not meet the definition of an EA (40 CFR 1508.9). This proposed regulation has only one category of Environmental Assessment, which would make the NEPA process less complex and consistent with the CEQ regulations. This is a substantive change in the regulation, but not in the current process.

The current FSA Farm Programs NEPA regulations in 7 CFR part 799 do not specify the types of actions for which an EA is required. This rule proposes a specific list of actions for which an EA is normally required, in addition to the previously discussed list of CatExs where an ESW is needed to determine if an EA is required (see 7 CFR 799.31 and 799.32, respectively). This rule also proposes the information that must be included in an EA (see 7 CFR 799.42). These provisions would help add clarity to the NEPA process.

This rule proposes to add criteria for developing a programmatic EA (PEA) if proposed actions in a program individually have an insignificant environmental impact, but cumulatively could have a significant impact (see 7 CFR 799.40(c)). FSA currently performs PEAs under the current regulations. FSA's PEAs are broad NEPA documents that examine a program or policy on a larger scale and provide an analytical framework to examine environmental impacts in comprehensive manner while providing the basis for future proposed actions and site-specific analyses (''tiering''). For example, the rulemaking to implement the Voluntary Public Access and Habitat Incentive Program (VPA–HIP) required State-level PEAs for all grant recipients. This eliminates the need to review and prepare an ESW for each of the individual incentives to provide public access or implement public access related activities for any single parcel of land in a State. The PEA process allows FSA to identify similar actions that share common issues, timing or geography; provides a framework for future tiered analyses to be consistent with one another; shortens development time; and reduces funding needs while streamlining or eliminating the environmental review process for certain individual actions analyzed in the PEA.

The use of the amended CatEx lists would likely substantially reduce the number of EAs that FSA is required to complete in a year, as compared to the number of EAs that FSA has completed in the past. The expected reduction in the number of EAs would depend on the finding of no extraordinary circumstances during the ESW analysis—in some cases the ESW process could result in a finding that an EA is required. Specifically, many Farm Loan Programs actions that currently require an EA would be categorically excluded with documentation required using the new ESW process. Some would be categorically excluded without documentation.

EIS Changes

This rule proposes a new subpart on the EIS process that consolidates EIS requirements from the existing regulations and more specifically describes the processes involved. As proposed in this rule and as required by NEPA and CEQ regulations, an EIS would be required for the following four types of actions:

- Legislative proposals, not including appropriations requests, drafted and submitted to Congress by FSA that have the potential to have significant impact on the quality of the human environment, as specified in 40 CFR 1506.8;
- Regulations for new programs, if through the preparation of an EA, FSA has determined that an EIS is necessary;
- Broad Federal assistance programs administered by FSA involving significant financial assistance for ground disturbing activities or payments to program participants that may have significant cumulative impacts on the human environment or national economy; and
- Ongoing programs that have been found through previous environmental analyses to have major environmental concerns.

These four categories of actions, while more clearly defined in this proposed rule than in the current regulations, are substantially similar to the requirements in the current NEPA regulations for FSA Farm Programs in 7 CFR part 799. The current NEPA regulations for FSA Farm Loan Programs in 7 CFR part 1940, subpart G, specify some general criteria for determining if an EIS is needed, with an emphasis on the location of the action (for example, floodplains, wetlands). The proposed changes are intended to clarify the requirements for an EIS, but are not intended to substantively change when an EIS is required. The changes in this proposed rule are not expected to result in a change in the number of EISs that FSA conducts each year. The proposed changes explain more clearly the procedures and process FSA will follow when preparing an EIS, including specific requirements for the information that must be included in an EIS. This rule also adds specific information on the process for developing a programmatic EIS, which is currently specified in the FSA handbooks rather than the regulations. As noted earlier, much of that process has already been implemented administratively.

Summary of Proposed Substantive Changes

This proposed rule consolidates and reorganizes the provisions currently in 7 CFR parts 799 and 1940, subpart G, into a revised 7 CFR part 799, adds longer and more specific lists of CatExs and of actions requiring an EA, and adds new provisions to comply with current CEQ guidance. The following table summarizes how the major provisions in this proposed regulation compare to similar provisions in the existing regulations.

TABLE 1—CHANGES FROM CURRENT 7 CFR PARTS 799 AND 1940 TO PROPOSED 7 CFR PART 799

Major provisions	Current 7 CFR part 799	Current 7 CFR part 1940	Proposed 7 CFR part 799	Additional information
Categorical Exclusions (CatEx).	The term categorical exclusion is not used, although there is a list of actions not normally requiring an EA or EIS.	Some specific Farm Loan Programs actions are categorically excluded under 7 CFR 1940.310(d).	Lists all categories of FSA actions and separates them into three categories: • Actions that are always CatExs, with no documentation required.	Proposed rule also includes specific process for publishing new CatExs in the future, including public review and comment process.

TABLE 1—CHANGES FROM CURRENT 7 CFR PARTS 799 AND 1940 TO PROPOSED 7 CFR PART 799—Continued

Major provisions	Current 7 CFR part 799	Current 7 CFR part 1940	Proposed 7 CFR part 799	Additional information
			• Actions that are categorically excluded with documentation in an ESW to determine whether an extraordinary circumstance exists in which case an EA would be required. • Actions that cannot be CatExs and require the completion of the ESW to determine if an EA or EIS is required.	
Environmental Assessments (EAs).	Requires NEPA process to be followed but does not specify which Farm Programs actions require an EA.	Requires EAs, depending on circumstances, for certain Farm Loan Programs actions. See 7 CFR 1940.311, 312, 318, and 319.	Eliminates the Class I and Class II actions for Farm Loan Programs. Lists all specific FSA actions that require an EA, and those that require an ESW to determine if an EA is required.	Some actions that currently require an EA would be categorically excluded actions.
Environmental Impact Statements (EIS).	Specifies general categories of FSA Farm Programs actions that are likely to have a significant impact on the environment, and specific programs that are not.	Specifies criteria for determining significant impact, with an emphasis on floodplains and wetlands. See 7 CFR 1940.313, 314, and 320.	Specifies the general categories of FSA actions that are likely to have a significant impact on the environment. Specifies the content of an EIS and the review process.	No change in the types of actions for which an EIS is required, but more detail on the content and review process of an EIS.
Environmental Screening Worksheet (ESW).	An appendix provides the now obsolete ASCS–929 form.	Environmental Evaluation (RD 1940–22 (NOTE: RD is a successor agency to FmHA)) is required to determine if a Class I or Class II EA should be prepared. See 7 CFR 1940.317(c).	An ESW would be required for FSA actions that fall into a listed CatEx requiring documentation to determine if an extraordinary circumstance exists and if an EA or EIS should be prepared.	The description of how to use the current FSA Environmental Evaluation form (FSA 850) is in the handbooks, not the regulations. The ESW is shorter and has more specific criteria than the current FSA 850.
Programmatic NEPA Process.	Not addressed	Not addressed specifically, although tiering is in 7 CFR 1940.327.	Specified process for conducting programmatic NEPA for FSA programs and actions that have a national scope.	This is not a new process for FSA, but the process is currently not specified in the FSA regulations.
Integration of other environmental laws and regulations.	NEPA and CEQ's NEPA regulations are the only environmental laws and regulations referenced.	Some other environmental law requirements are mentioned, but not in detail and with little guidance on how they apply.	Many environmental laws, Executive Orders, and regulations are added as references. Compliance with other environmental laws such as NHPA is explained in detail and integrated into the ESW.	FSA already complies with the Executive Orders, USDA regulations, laws, and CEQ guidance listed in the proposed rule, but most of those references are not in the current regulations.

Consolidating and Clarifying Amendments

Many of the proposed changes in this rule are essentially minor technical and clarifying changes, some changes reorganize the requirements from the current regulations. This section of the preamble discusses the technical and structural changes to the regulations that are intended to increase clarity and remove obsolete provisions, but would not change requirements for the public or change the environmental review processes administratively.

All of the definitions that apply to NEPA implementation for FSA Farm Programs, Farm Loan Programs, and CCC programs administered by FSA would be in one section of the consolidated regulations, § 799.4. In addition to the definitions already in the current regulations, this rule proposes to add definitions for ''application,'' ''construction,'' ''consultation,'' ''environmental screening worksheet,'' ''financial assistance,'' ''historic properties,'' ''memorandum of agreement,'' ''program participant,'' ''protected resources,'' ''State Historic Preservation Officer,'' ''Tribal Historic Preservation Officer,'' and ''wetlands.'' These terms are all already used in FSA's current NEPA implementation and Environmental Quality Programs handbook (1–EQ); adding them to the regulations will provide clarity to the FSA NEPA process, but will not change the existing process. For example, the definition for ''historic properties'' in this rule, includes prehistoric or historic districts, sites, buildings, structures or objects, which are included in, or eligible for inclusion in, the National Register of Historic Places, which is consistent with the other Federal agencies and NHPA (16 U.S.C. 470–470x–6) regulations.

Similarly, the definition for ''consultation'' in this rule includes the process of considering the views of other participants in the environmental review process and seeking agreement where feasible is consistent with how other USDA agencies (for example, NRCS) define ''consultation'' in their NEPA and NHPA regulations.

As proposed in this rule, all of the FSA NEPA compliance responsibilities would be specified in 7 CFR part 799. The regulations would clarify who is responsible for NEPA and NHPA compliance at the national level by specifying that the Administrator or designee will appoint a National Environmental Compliance Manager as required by 40 CFR 1507.2(a) and a Federal Preservation Officer as required by section 110 of NHPA (16 U.S.C. 470hndash;2(a)) and Executive Order 13287. These are not new responsibilities; this would clarify the regulations. To update the current position titles in FSA, the references to State Director from 7 CFR part 1940, subpart G, would be changed to State Executive Director. Other revised provisions would clarify the role of the State Environmental Coordinator, to be consistent with current practice.

The requirements for CatExs, EAs, and EISs would be organized into separate subparts, so that it would be clearer which requirements and processes apply to each type of environmental review. For example, the section on ''tiering,'' a process that is relevant to the EIS process but not used for EAs or CatExs, would be in the EIS subpart, but the requirements for ''tiering'' would not change.

Many of the changes in this proposed rule would remove obsolete provisions and terminology. For example, references to agencies that no longer exist would be removed, and replaced with references to FSA. This rule would also remove references to programs that no longer exist (such as the Agricultural Conservation Program, Water Bank Program, Tobacco Production Adjustment Program, Bee Indemnity Program, and Naval Stores Program), replacing them with more general provisions that apply to types of programs and actions rather than to specific programs. These changes would make the regulations clearer, more transparent, and up to date, but are not substantive changes and should have no impact on the NEPA analysis process.

The current regulations in 7 CFR parts 799 and 1940, subpart G, have numerous exhibits and appendices. These include obsolete forms and obsolete organizational charts. This rule would remove those exhibits and appendices, which would not change the current process because in most cases the referenced items are no longer used. This rule would add references in § 799.1, ''Purpose,'' to several dozen relevant environmental laws, Executive Orders, and regulations that were developed since the current regulations were published. References to departmental regulations currently listed in appendices to 7 CFR part 1940 would also be moved to this list of references. FSA is already required to comply with these laws, Executive Orders, departmental regulations, and regulations of other agencies, so listing all of the relevant references in one consolidated section would not be a change the current practice.

Conforming Changes

In addition to the changes discussed above, a number of changes would need to be made in other related FSA regulations. Throughout the FSA regulations, references to NEPA regulations and environmental compliance would be updated to refer to 7 CFR part 799. Several environmental compliance sections would become redundant and would be removed. For example, the separate environmental compliance section for the Farm Storage Facility Loan program would be removed, because that program is subject to the same environmental compliance requirements as every other FSA program.

Currently, the Rural Housing Service and Rural Business-Cooperative Service also use 7 CFR part 1940, subpart G. However, exhibit M to subpart G, ''Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land Affecting Farmer Program Loans and Loans to Indian Tribes and Tribal Corporations,'' is currently only used by FSA. The Rural Development agencies do not use exhibit M to subpart G because the provisions related to swampbuster and sodbuster do not apply to the Rural Development agencies. There are cross references to exhibit M throughout subpart G that would be unnecessarily complicated to change at this time because the goal is to remove subpart G when both Rural Development and FSA have their own replacement regulations in place. Therefore, the content of exhibit M to subpart G would be replaced with references for specific types of information, for example, when to refer to 7 CFR part 12 or 7 CFR part 799.

Along with the changes proposed to the regulations, FSA will make conforming changes to any references to 7 CFR part 1940, subpart G, for example, in forms and handbooks.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, ''Regulatory Planning and Review,'' and has reviewed this rule. A summary of the cost benefit analysis is provided below and is available at *www.regulations.gov* and from the contact information listed above.

Clarity of the Regulations

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make it easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Summary of Economic Impacts

This rule is expected to provide both quantifiable and qualitative benefits. It is expected to provide qualitative benefits by improving the efficiency and transparency of the NEPA process. By consolidating FSA NEPA procedures into a single rule and more clearly identifying the process required under different types of circumstances, this rule is expected to increase understanding and consistency in implementing the NEPA process while decreasing the time spent addressing NEPA requirements. Confusion in

selecting the correct type of NEPA analysis can cause unnecessary delays in implementing projects and approving loans. For example, delay can occur if an EA was done but a CatEx could have applied. The current number of any NEPA analysis errors, as well as the delays caused by the lack of clarity and consistency in the current rules, is difficult to quantify. However, it is clear that increasing consistency and transparency, and reducing errors and uncertainty, will provide public benefit.

The expanded and clarified list of CatExs in this rule is expected to generate specific, quantifiable benefits associated with reducing the number of EAs required. One benefit will be the cost savings due to reduced FSA workload. The public, including, but not limited to, individual program participants, lenders, and State agencies and organizations, will likely see both cost savings and qualitative benefits from the reduced time required to complete the NEPA process for both Farm Programs and Farm Loan Programs actions. To estimate the impact of fewer EAs, the Cost Benefit Analysis uses the assumptions that current programs continue and that most Farm Loan Programs actions for which the current regulation would require site level EAs would qualify for either CatExs without documentation or for CatExs that require the use of the ESW. Using these assumptions, the proposed NEPA rule changes could eliminate, on average, 314 environmental assessments per year based on our analysis of Farm Loan Programs EAs done between 2002 and 2009. In 2008, the average cost to FSA for these EAs was estimated at $1,100, suggesting an annual savings of $345,000 in FSA expenses for environmental reviews as a result of this rule.

Actual cost savings may be higher or lower than $345,000 in any specific year, because the number and types of required NEPA analyses in any given year depend on participation in the specific FSA programs for which NEPA applies. For example, the impact for Farm Loan Programs depends on how many loans are for actions on land that has already been disturbed, as opposed to those that involve additional disturbance such as pond or building construction.

This rule does not change the basic requirements for an EIS, so it is not expected to result in a change in the number of EISs associated with FSA programs. Therefore, no costs or benefits, other than increased clarity of procedure, are expected for the EIS process as a result of this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule would not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

This rule would generally reduce the level of NEPA analysis required for most Farm Loan Programs and some Farm Programs actions. It should have a minor positive effect on small entities, including small government entities, by reducing the uncertainty and delay associated with NEPA compliance.

Environmental Evaluation

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: Those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This rule does not provide grants, cooperative agreements, or any other benefits. Therefore, FSA has concluded that this rule does not require consultation with State and local officials as when USDA provides Federal financial assistance or direct Federal development (see 7 CFR 3015.307). Therefore, this rule is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule preempts State and local laws, regulations, or policies that are in conflict with the provisions of this rule. The rule will not have retroactive effect. Any action under this rule may be appealed, consistent with the Administrative Procedure Act (Pub. L. 79–404). Before any judicial action may be brought regarding the provisions of this rule, all administrative remedies in accordance with 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on State and local governments. The provisions in this proposed rule may impose compliance costs on State and local governments, but these are not new costs, as the provisions in this rule have already been implemented as required by per various Executive Orders, laws, and CEQ guidance. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation

and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are identified for this rule, which are not expressly mandated by any law or regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments, or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule does not contain Federal mandates for State, local, or tribal governments or for the private sector that would result in the addition analysis as required by Title II of UMRA. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

This rule applies to all Farm Service Agency Federal assistance programs found in the Catalog of Federal Domestic Assistance.

Paperwork Reduction Act of 1995

Currently, as specified in 7 CFR 1940.350, the OMB control number approving the NEPA information collection, for FSA and the Rural Development agencies is 0575–0094. The proposed changes to the regulation eliminate FSA's use of the form, RD 1940–22, Request for Environmental Information, previously used by FSA and included in that approval. In the past, financial institutions completed the form RD 1940–22 and submitted the form to FSA; that process has been revised and that form is no longer used.

The proposed FSA NEPA regulation does not have any information collection activities related to the NEPA process. An FSA county office employee gathers information from soil maps, wetland maps, etc. then visits the site. The FSA county office employee uses the ESW form, which is an internal form within FSA only. The ESW is completed by the FSA county office staff, with relevant information from one or more of the following as appropriate: completed application, from the visiting farmers, and like all other FSA programs an AD–1026, which is approved for FSA use under OMB control number 0560–0185 is required to be on file to comply with swampbuster and sodbuster. There is no information collection burden for this proposed rule because it is associated with application for or participation in one or more FSA programs and that information collection burden is approved for each respective FSA program, as needed. As noted in § 799.42(c), FSA may request a program participant to provide information for use in an EA. That supplemental information will be case specific; the primary information comes from the information the applicant gave to the program itself (already covered by PRA) and site visits. Any additional information will be specific to the action in question. Therefore, it does not require additional approval under the Paperwork Reduction Act.

E-Government Act Compliance

FSA is committed to complying 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. The proposed rule and substantiating documents, and the final rule when approved, will be available on the FSA Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep.*

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 762

Agriculture, Banks, Banking, Credit, Loan programs-agriculture, Reporting and recordkeeping requirements.

7 CFR Part 763

Agriculture, Banks, Banking, Credit, Loan programs-agriculture.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—agriculture.

7 CFR Part 767

Agriculture, Credit, Government property, Government property management, Indians—loans, Loan programs—agriculture.

7 CFR Part 770

Credit, Indians, Loan programs-agriculture, Reporting and recordkeeping requirements.

7 CFR Part 772

Agriculture, Credit, Loan programs-agriculture, Rural areas.

7 CFR Part 773

Apples, Loan programs-agriculture.

7 CFR Part 774

Loan programs-agriculture, Seeds.

7 CFR Part 799

Environmental impact statements.

7 CFR Part 1436

Administrative practice and procedure, Loan programs-agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1940

Agriculture, Environmental protection, Flood plains, Grant programs-agriculture, Grant programs-housing and community development, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas, Truth in lending.

For the reasons discussed in the preamble, FSA proposes to amend 7 CFR chapters VII, XIV, and XVIII as follows:

7 CFR Chapter VII

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for part 761 would continue to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 761.10 [Amended]

■ 2. Amend § 761.10(c)(3) by removing the words ''subpart G of 7 CFR part 1940'' and adding the words ''part 799 of this chapter'' in their place.

PART 762—GUARANTEED FARM LOANS

■ 3. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 762.128 [Amended]

■ 4. Amend § 762.128 as follows:
■ a. In paragraph (a) remove the words ''part 1940, subpart G, of this title'' and add the words ''part 799 of this chapter'' in their place; and
■ b. In paragraph (c)(3) remove the words ''part 1940, subpart G'' and add the words ''part 799 of this chapter'' in their place.

PART 763—LAND CONTRACT GUARANTEE PROGRAM

■ 5. The authority citation for part 763 continues to read as follows:

Authority: 5 U.S.C. 501 and 7 U.S.C. 1989.

§ 763.7 [Amended]

■ 6. In § 763.7(b)(12) remove the words ''part 1940, subpart G, of this title'' and add the words ''part 799 of this chapter'' in their place.

§ 763.16 [Amended]

■ 7. In § 763.16(a) remove the words ''part 799 and part 1940, subpart G, of this title'' and add the words ''part 799 of this chapter'' in their place.

PART 764—DIRECT LOAN MAKING

■ 8. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§§ 764.51 and 764.106 [Amended]

■ 9. Amend §§ 764.51(b)(7) and 764.106(b) by removing the words ''subpart G of 7 CFR part 1940'' and adding the words ''part 799 of this chapter'' in their place.

PART 765—DIRECT LOAN SERVICING—REGULAR

■ 10. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§§ 765.205, 765.252, and 765.351 [Amended]

■ 11. Amend §§ 765.205, 765.252, and 765.351 by removing the words ''subpart G of 7 CFR part 1940'' and adding the words ''part 799 of this chapter'' in their place in the following places:
■ a. In § 765.205(a)(3);
■ b. § 765.252(b)(3)(ii); and
■ c. § 765.351(a)(6).

PART 766—DIRECT LOAN SERVICING—SPECIAL

■ 12. Revise the authority citation for part 766 to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 1981d(c).

Subpart C—Loan Servicing Programs

§§ 766.102 and 766.112 [Amended]

■ 13. Amend §§ 766.102(a)(5) and 766.112(b)(2) by removing the words ''subpart G of 7 CFR part 1940'' and adding the words ''part 799 of this chapter'' in their place.

PART 767—INVENTORY PROPERTY MANAGEMENT

■ 14. The authority citation for part 767 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 767.201 [Amended]

■ 15. Amend § 767.201, introductory text, by removing the words ''subpart G of 7 CFR part 1940'' and adding the words ''part 799 of this chapter'' in their place.

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

■ 16. The authority citation for part 770 is revised to read as follows:

Authority: 5 U.S.C. 301 and 25 U.S.C. 488.

§ 770.5 [Amended]

■ 17. Amend § 770.5(a) by removing the words ''exhibit M to subpart G of part 1940 of this title'' and adding the words ''part 799 of this chapter'' in their place.

PART 772—SERVICING MINOR PROGRAM LOANS

■ 18. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

§ 772.4 [Amended]

■ 19. In § 772.4 remove the words ''7 CFR part 1940, subpart G and the exhibits to that subpart and''.

§ 772.6 [Amended]

■ 20. Amend § 772.6(a)(6) by removing the words ''7 CFR part 1940, subpart G'' and adding the words ''part 799 of this chapter'' in their place.

PART 773—SPECIAL APPLE LOAN PROGRAM

■ 21. The authority citation for part 773 continues to read as follows:

Authority: Pub. L. 106–224.

§ 773.9 [Removed]

■ 22. Remove § 773.9.

§ 773.18 [Amended]

■ 23. Amend § 773.18(a)(3) by removing the words ''7 CFR part 1940, subpart G'' and adding the words ''part 799 of this chapter'' in their place.

PART 774—EMERGENCY LOAN FOR SEED PRODUCERS PROGRAM

■ 24. The authority citation for part 774 continues to read as follows:

Authority: Pub. L. 106–224

§ 774.9 [Removed]

■ 25. Remove § 774.9.

§ 774.17 [Amended]

■ 26. Amend § 774.17(d) by removing the words ''7 CFR part 1940, subpart G'' and adding the words ''part 799 of this chapter'' in their place.

■ 27. Revise part 799 to read as follows:

PART 799—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General Farm Service Agency (FSA) Regulations Implementing NEPA

Sec.
799.1 Purpose.
799.2 FSA environmental policy.
799.3 Applicability.
799.4 Abbreviations and definitions.

Subpart B—FSA and Program Participant Responsibilities

799.5 National office environmental responsibilities.
799.6 FSA State office environmental responsibilities.
799.7 FSA program participant responsibilities.
799.8 Significant environmental effect.
799.9 Environmental review documents.
799.10 Administrative records.
799.11 Actions during NEPA reviews.
799.12 Emergency circumstances.
799.13 FSA as lead agency.
799.14 FSA as cooperating agency.
799.15 Public involvement in environmental review.
799.16 Scoping.
799.17 Public meetings.
799.18 Overview of FSA NEPA process.

Subpart C—Environmental Screening Worksheet

799.20 Purpose of environmental screening worksheet.
799.21 [Reserved]

Subpart D—Categorical Exclusions

799.30 Purpose of categorical exclusion process.
799.31 Categorical exclusions not requiring an environmental screening worksheet.
799.32 Categorical exclusions requiring an environmental screening worksheet.
799.33 Extraordinary circumstances.
799.34 Review for extraordinary circumstances.
799.35 Establishing and revising categorical exclusions.

Subpart E—Environmental Assessments (EA)

799.40 Purpose of an EA.
799.41 When an EA is required.
799.42 Contents of an EA.
799.43 Adoption of an EA prepared by another entity.
799.44 Finding of No Significant Impact (FONSI).

Subpart F—Environmental Impact Statements

799.50 Purpose of an EIS.
799.51 When an EIS is required.
799.52 Notice of intent to prepare EIS.
799.53 Contents of an EIS.
799.54 Draft EIS.
799.55 Final EIS.
799.56 Supplemental EIS.
799.57 Tiering.
799.58 Adoption of an EIS prepared by another entity.
799.59 Record of Decision.

Authority: 42 U.S.C. 4321–4370.

Subpart A—General FSA Implementing Regulations for NEPA

§ 799.1 Purpose.

(a) This part:

(1) Explains major U.S. Department of Agriculture Farm Service Agency (FSA) environmental policies.

(2) Establishes FSA procedures to implement the:

(i) National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321–4370);

(ii) Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500 through1518); and

(iii) United States Department of Agriculture (USDA) NEPA regulations (§§ 1b.1 through 1b.4 of this title).

(3) Establishes procedures to ensure that FSA complies with other applicable laws, regulations, and Executive Orders, including but not limited to the following:

(i) American Indian Religious Freedom Act (42 U.S.C. 1996);

(ii) Archaeological and Historic Preservation Act (16 U.S.C. 469–469c);

(iii) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–470mm);

(iv) Clean Air Act (42 U.S.C. 7401–7671q);

(v) Clean Water Act (33 U.S.C. 1251–1387);

(vi) Coastal Barrier Resources Act (16 U.S.C. 3501–3510);

(vii) Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451–1466);

(viii) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675);

(ix) Endangered Species Act (16 U.S.C. 1531–1544);

(x) Farmland Protection Policy Act (7 U.S.C. 4201–4209);

(xi) Migratory Bird Treaty Act (16 U.S.C. 703–712);

(xii) National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470–470x–6),

(xiii) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013);

(xiv) Resource Conservation and Recovery Act (42 U.S.C. 6901–6992k);

(xv) Safe Drinking Water Act (42 U.S.C. 300h–300h.8);

(xvi) Wild and Scenic Rivers Act (16 U.S.C. 1271–1287);

(xvii) Wilderness Act (16 U.S.C. 1131–1136);

(xviii) Advisory Council on Historic Preservation regulations in 36 CFR part 800 ''Protection of Historic Properties;''

(xix) USDA, Office of Environmental Quality regulations in part 3100 of this title, ''Cultural and Environmental Quality'' (see part 190, subpart F, of this title, ''Procedures for the Protection of Historic and Archaeological Properties,'' for more specific implementation procedures);

(xx) USDA, Natural Resources Conservation Service regulations in part 658 of this title, ''Farmland Protection Policy Act;''

(xxi) USDA regulations in part 12 of this title, ''Highly Erodible Land and Wetland Conservation;''

(xxii) U.S. Department of the Interior, National Park Service regulations in 36 CFR part 60, ''National Register of Historic Places;''

(xxiii) U.S. Department of the Interior, National Park Service regulations in 36 CFR part 63, ''Determinations of Eligibility for Inclusion in the National Register of Historic Places;''

(xxiv) USDA, Departmental Regulation 9500–3, ''Land Use Policy;''

(xxv) USDA, Departmental Regulation 9500–4, ''Fish and Wildlife Policy;''

(xxvi) Executive Order 11514, ''Protection and Enhancement of Environmental Quality;''

(xxvii) Executive Order 11593, ''Protection and Enhancement of the Cultural Environment;''

(xxviii) Executive Order 11988, ''Floodplain Management;''

(xxix) Executive Order 11990, ''Protection of Wetlands;''

(xxx) Executive Order 11991, ''Relating to Protection and Enhancement of Environmental Quality;''

(xxxi) Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;''

(xxxii) Executive Order 13007, ''Indian Sacred Sites;''

(xxxiii) Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments;''

(xxxiv) Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds;'' and

(xxxv) Executive Order 13287, ''Preserve America;''

(b) The procedures and requirements in this part supplement CEQ and USDA regulations; they do not replace or supersede them.

§ 799.2 FSA environmental policy.

(a) FSA will:

(1) Use all practical means to protect and, where possible, improve the quality of the human environment and avoid or minimize any adverse environmental effects of FSA actions;

(2) Ensure the requirements of NEPA and other State and national environmental policies designed to protect and manage impacts on the human environment are addressed:

(i) As required by 40 CFR 1501.2, at the earliest feasible stage in the planning of any FSA action,

(ii) Concurrently and in a coordinated manner,

(iii) During all stages of the decision making process,

(iv) Using professional and scientific integrity in their discussions and analyses, identify applicable methodologies, and explain the use of the best available information, and

(v) In consultation with all interested parties, including Federal, State, and Tribal governments;

(3) Make environmental analysis available to the public before decisions are finalized though various means including posting the analyses on the FSA Web site; and

(4) Ensure that, if an FSA action represents one of several phases of a larger proposal, the entire proposal is the subject of an environmental review independent of the phases of funding. If the FSA action is one segment of a

larger action funded by private parties or other governmental agencies, the entire action will be used in determining the appropriate level of FSA environmental review.

(b) A proposal that consists of more than one categorically excluded action may be categorically excluded only if all components of the action are eligible for a single categorical exclusion.

§ 799.3 Applicability.

(a) Except as provided for in paragraph (b) of this section, this part applies to:

(1) The development or revision of FSA rules, regulations, plans, policies, or procedures;

(2) New or continuing FSA actions and programs, including Commodity Credit Corporation (CCC) programs, Farm Loan Programs, and Farm Programs; and

(3) FSA legislative proposals, not including appropriations requests, developed by FSA or with significant FSA cooperation and support.

(b) This part does not apply to FSA programs specifically exempted from environmental review by the authorizing legislation for those programs.

§ 799.4 Abbreviations and definitions.

(a) The following abbreviations apply to this part:

CAFO Concentrated Animal Feeding Operation.
CCC Commodity Credit Corporation.
CEQ Council on Environmental Quality.
EA Environmental Assessment.
EIS Environmental Impact Statement.
FONSI Finding of No Significant Impact.
FPO Federal Preservation Officer.
FSA Farm Service Agency.
MOU Memorandum of Understanding.
NECM National Environmental Compliance Manager.
NEPA National Environmental Policy Act.
NHPA National Historic Preservation Act.
NOA Notice of Availability.
NOI Notice of Intent.
PEA Programmatic Environmental Assessment.
PEIS Programmatic Environmental Impact Statement.
RAO Responsible Approving Official.
ROD Record of Decision.
SEC State Environmental Coordinator.
SED State Executive Director for FSA.
SEIS Supplemental Environmental Impact Statement.
SHPO State Historic Preservation Officer.
THPO Tribal Historic Preservation Officer.
USDA United States Department of Agriculture.

(b) The definitions in 40 CFR part 1508 apply and are supplemented by parts 718 and 1400 of this title, and in the event of a conflict with the definitions in this section will be controlling. In addition, the following definitions apply to this part:

Application is the formal process of seeking FSA assistance.

Construction includes building, rehabilitation, modification, repair, and demolition of facilities, and earthmoving actions.

Consultation is the process of seeking, discussing, and considering the views of other participants in the environmental review process and seeking agreement where feasible.

Environmental screening worksheet is the FSA screening procedure used to evaluate if a proposed action that can be categorically excluded involves extraordinary circumstances that could produce potential environmental impacts, and to evaluate the appropriate level and extent of review and analysis in an EA or EIS when a CatEx is not available.

Financial assistance is any form of loan, loan guarantee, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal monetary assistance.

Floodplains are the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior as defined in 36 CFR 800.16.

Memorandum of Agreement is a document that records the terms and conditions agreed upon to resolve the potential effects of a Federal agency action or program. Often used interchangeably with Memorandum of Understanding.

Programmatic Environmental Assessment (PEA) is an assessment prepared when the significance of impacts of a program are uncertain to assist in making this determination.

Programmatic Environmental Impact Statement (PEIS) is an analysis of the potential impacts that could be associated with various components of a program or action that may not yet be clearly defined or even known to determine if the program or its various components have the potential to significantly affect the quality of the human environment.

Program participant is any person, agency, or other entity that applies for or receives FSA program benefits or assistance.

Protected resources are sensitive resources that are protected by laws, regulations, or Executive Orders for which FSA actions may pose highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

State Historic Preservation Officer (SHPO) is the official appointed or designated under the NHPA to administer a State historic preservation program or a representative to act for the SHPO.

Tribal Historic Preservation Officer (THPO) is the Tribal official appointed by a Tribe's chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the SHPO on Tribal lands under the NHPA.

Wetlands are areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do support or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mudflats, and natural ponds.

Subpart B—FSA and Program Participant Responsibilities

§ 799.5 National office environmental responsibilities.

(a) The FSA Administrator or designee:

(1) Is the Responsible Federal Officer (RFO) for FSA compliance with applicable environmental laws, regulations, and Executive Orders, including NEPA;

(2) Will ensure responsibilities for complying with NEPA are adequately delegated to FSA personnel within their areas of responsibility at the Federal, State, and county levels;

(3) Will appoint a National Environmental Compliance Manager (NECM), as required by 40 CFR 1507.2(a), who reports directly to the FSA Administrator; and

(4) Will appoint a qualified Federal Preservation Officer (FPO), as required by Executive Order 13287 ''Preserve America'' section 3(e) and by section 110 of NHPA (16 U.S.C. 470h–2(a)). This individual must meet the National

Park Service professional qualification standards requirements referenced in 36 CFR part 61 and will report directly to the NECM.

(b) The NECM or designee coordinates FSA environmental policies and reviews under this part on a national basis and is responsible for:

(1) Ensuring FSA legislative proposals and multistate and national programs are in compliance with NEPA and other applicable environmental and cultural resource laws, regulations, and Executive Orders;

(2) Providing education and training on implementing NEPA and other environmental requirements to appropriate FSA personnel;

(3) Serving as the principal FSA advisor to the FSA Administrator on NEPA requirements;

(4) Representing FSA, and serving as an intra- and inter- agency liaison, on NEPA-related matters on a national basis;

(5) Maintaining a record of FSA environmental actions; and

(6) Ensuring State and county office compliance with NEPA and other applicable environmental laws, regulations, and Executive Orders.

(c) The FPO or designee coordinates NHPA compliance under this part and is responsible for:

(1) Serving as the principal FSA advisor to the NECM on NHPA requirements;

(2) Representing FSA, and serving as FSA intra- and inter- agency liaison, on all NHPA-related matters on a national basis;

(3) Maintaining current FSA program guidance on NHPA requirements;

(4) Maintaining a record of FSA environmental actions related to the NHPA; and

(5) Ensuring State and county office compliance with the NHPA.

§ 799.6 FSA State office environmental responsibilities.

(a) FSA State Executive Directors (SEDs) or designees are the responsible approving officials (RAOs) in their respective States and are responsible for:

(1) Ensuring FSA actions within their State comply with applicable environmental laws, regulations, and Executive Orders, including NEPA; and

(2) Appointing one or more State Environmental Coordinators (SECs).

(b) An SED will not appoint more than one SEC for Farm Programs and one SEC for Farm Loan Programs in a State unless approved in writing by the NECM.

(c) SECs or designees are responsible for:

(1) Serving as the environmental compliance coordinators on all environmental-related matters within their respective State;

(2) Advising SEDs on environmental issues;

(3) Providing training, in coordination with the NECM, on NEPA and other environmental compliance requirements to appropriate FSA State and county office personnel;

(4) Providing technical assistance on environmental-related matters on an action-by-action basis to State and county office personnel, as needed;

(5) Developing controls for avoiding or mitigating adverse environmental impacts and monitoring the implementation of those controls;

(6) Reviewing FSA actions that are not categorically excluded from NEPA and that require State office approval or clearance, and making appropriate recommendations to the approving official;

(7) Providing assistance to resolve post approval environmental issues at the State office level;

(8) Maintaining decision records for State office environmental compliance matters;

(9) Monitoring their respective State's compliance with environmental laws, regulations, and Executive Orders;

(10) Acting as a liaison on FSA State office environmental compliance matters with the public and other Federal, State, and Tribal governments;

(11) Representing the SED on environmental issues as requested;

(12) Delegating duties under this section with the approval of both the SED and NECM; and

(13) Other NEPA related duties as assigned.

(d) County Executive Directors, District Directors, and Farm Loan Programs loan approval officers or designees are responsible for compliance with this part within their geographical areas.

§ 799.7 FSA program participant responsibilities.

(a) Potential FSA program participants seeking FSA assistance must do all of the following, unless the action is categorically excluded as specified in §§ 799.31 or 799.32:

(1) Consult with FSA early in the application process about potential environmental concerns associated with program participation.

(2) Submit applications for all Federal, regional, State, and local approvals and permits early in the planning process.

(3) Coordinate the submission of applications to FSA and other agencies (for example, if a conservation plan is required the application is also submitted to USDA's Natural Resources Conservation Service).

(4) Work with other appropriate Federal, State, and Tribal governments to ensure all environmental factors are identified and impacts addressed and, to the extent possible, mitigated consistent with how mitigation is defined in 40 CFR 1508.20.

(5) Inform FSA of other Federal, State, and Tribal government environmental reviews that have previously been completed or required of the program participant.

(6) Provide FSA with a list of all parties affected by or interested in the proposed action.

(b) When FSA receives an application for assistance or notification that an application will be filed, FSA will contact the potential program participant about the environmental information the program participant must provide as part of the application process. This required information may include:

(1) Design specifications;

(2) Topographical, aerial, and location maps;

(3) Surveys and assessments necessary for determining the impact on environmentally sensitive resources listed in § 799.33(c);

(4) Nutrient management plans; and

(5) Applications and permits for all Federal, regional, State and local approvals including construction permits, storm water run-off and operational permits, and engineering plans.

(c) FSA will prepare and make available general guidelines for program participants that describe the scope and level of environmental information required for evaluating proposed actions and make those available on the FSA Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep.*

§ 799.8 Significant environmental effect.

In determining whether a proposed action will have a significant effect on the quality of the human environment, FSA will consider the action's potential effects in the context of society as a whole, the affected region and interests, and the locality, and the intensity of the potential impact as specified in 40 CFR 1508.27.

§ 799.9 Environmental review documents.

(a) FSA may prepare the following documents during the environmental review process:

(1) Environmental screening worksheet;

(2) Programmatic Environmental Assessment (PEA);
(3) Environmental Assessment (EA);
(4) Supplemental Environmental Assessment;
(4) Programmatic Environmental Impact Statement (PEIS);
(5) Environmental Impact Statement (EIS);
(6) Supplemental Environmental Impact Statement (SEIS);
(7) Finding of No Significant Impact (FONSI);
(8) Record of Decision (ROD);
(9) Notice of Intent (NOI) to prepare any type of EA or EIS;
(10) Notice of Availability (NOA) of environmental documents for public review or comment;
(11) Notice of public scoping meetings;
(12) Other notices, including those required under Executive Order 11988, ''Floodplain Management,'' and Executive Order 11990, ''Protection of Wetlands;''
(13) Memorandums of Agreement or Understanding (MOA or MOU), such as those for mitigation of adverse effects on historic properties as specified in 36 CFR part 800, ''Protection of Historic Properties;'' and
(14) Environmental studies, as indicated and appropriate.
(b) [Reserved]

§ 799.10 Administrative records.

(a) FSA will maintain an administrative record of documents and materials FSA created or considered during its NEPA decision making process for a proposed action and referenced as such in the NEPA documentation, which can include any or all the following:
(1) All NEPA environmental review documents listed in § 799.9, as applicable;
(2) Technical information, sampling results, survey information, engineering reports, and studies, including environmental impact studies and assessments;
(3) Policies, guidelines, directives, and manuals;
(4) Internal memorandums or informational papers;
(5) Contracts or agreements;
(6) Notes of telephone conversations and meetings, unless they are personal notes;
(7) Meeting minutes;
(8) Correspondence with agencies and stakeholders;
(9) Communications to and from the public;
(10) Documents and materials that contain any information that supports or conflicts with the FSA decision;
(11) Maps, drawings, charts, and displays; and
(12) All public comments received during the NEPA comment periods.
(b) The administrative record may be used, among other purposes, to facilitate better decision making.

§ 799.11 Actions during NEPA reviews.

(a) Except as specified in paragraphs (b) and (c) of this section, FSA or a program participant must not take any action, implement any component of an action, or make any final decision during FSA's NEPA review process that could have an adverse environmental impact or limit the range of alternatives until FSA:
(1) Determines that the proposed action is categorically excluded under NEPA under subpart D of this part; or
(2) Issues a FONSI or ROD under subpart E or F of this part.
(b) FSA may approve interim actions related to proposed actions provided the:
(1) Interim actions will not have an adverse environmental impact;
(2) Expenditure is necessary to maintain a schedule for the proposed action;
(3) Interim actions and expenditures will not compromise FSA's review and decision making process; and
(4) NEPA review has been completed for the interim action or expenditure; or
(c) FSA and program participants may develop preliminary plans or designs, or perform work necessary to support an application for Federal, State, or local permits or assistance, during the NEPA review process.

§ 799.12 Emergency circumstances.

(a) If emergency circumstances exist that make it necessary to take action to mitigate harm to life, property, or important natural, cultural, or historic resources, FSA may take an action with significant environmental impact without complying with the requirements of this part.
(b) If emergency circumstances exist, the NECM will consult with CEQ as soon as feasible about alternative NEPA arrangements for controlling the immediate impact of the emergency, as specified in 40 CFR 1506.11.
(c) If emergency circumstances exist, the FPO will follow the emergency procedures specified in 36 CFR 800.12 regarding preservation of historic properties, if applicable.
(d) FSA assistance provided in response to a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as subsequently amended, is exempt from NEPA requirements, as specified in 42 U.S.C. 5159. Under a Presidentially-declared disaster, the following actions are exempt from NEPA and NHPA:
(1) Clearing roads and constructing temporary bridges necessary for performing emergency tasks and essential community services;
(2) Debris removal;
(3) Demolishing unsafe structures that endanger the public or could create a public health hazard if not demolished;
(4) Disseminating public information and assistance for health and safety measures;
(5) Providing technical assistance to State, regional, local, or Tribal governments on disaster management control;
(6) Reducing immediate threats to life, property, and public health and safety; and
(7) Warning of further risks and hazards.

§ 799.13 FSA as lead agency.

(a) When FSA acts as the lead agency in a NEPA review as specified in 40 CFR 1501.5, FSA will:
(1) Coordinate its review with other appropriate Federal, State, and Tribal governments; and
(2) Request other agencies to act as cooperating agencies as specified in 40 CFR 1501.6 and defined at 40 CFR 1508.5 as early in the review process as possible.
(b) If FSA acts as a lead agency for a proposed action that affects more than one State, the NECM will designate one SEC to act as RAO.
(c) If the role of lead agency is disputed, the RAO will refer the matter to the FSA Administrator, who will attempt to resolve the matter with the other agency. If the Federal agencies cannot agree which will serve as the lead agency, the FSA Administrator will follow the procedures specified in 40 CFR 1501.5(e) to request that CEQ determine the lead agency.

§ 799.14 FSA as cooperating agency.

(a) FSA will act as a cooperating agency if requested by another agency, as specified in 40 CFR 1501.6 and defined at 40 CFR 1508.5. However, FSA may decline another agency's request if FSA determines the proposed action does not fall within FSA's area of expertise or FSA does not have jurisdiction by law. If FSA declines such a request to cooperate, that will be documented in writing to the requesting agency and a copy will be provided to CEQ.
(b) FSA may request to be designated as a cooperating agency if another agency's proposed action falls within FSA's area of expertise.

§ 799.15 Public involvement in environmental review.

(a) FSA will involve the public in the environmental review process as early as possible and in a manner consistent with 40 CFR 1506.6. To determine the appropriate level of public participation, FSA will consider:

(1) The scale of the proposed action and its probable effects;

(2) The likely level of public interest and controversy; and

(3) Advice received from knowledgeable parties and experts.

(b) Depending upon the scale of the proposed action, FSA will:

(1) Coordinate public notices and consultation with the U.S. Fish and Wildlife Service, USDA's Natural Resources Conservation Service, Federal Emergency Management Agency, the National Marine Fisheries Service, the U.S. Army Corp of Engineers, and other agencies, as appropriate, if wetlands, floodplains, or endangered species have the potential to be impacted;

(2) Make appropriate environmental documents available to interested parties on request;

(3) Publish a Notice of Intent (NOI) to prepare an EA or EIS as specified in subparts E and F; and

(4) Publish a Notice of Availability (NOA) of draft and final EAs, FONSIs, EISs, and RODs as specified in subparts E and F.

(c) If the effects of a proposed action are local in nature and the scale of the proposed action is likely to generate interest and controversy at the local level, in addition to the actions specified in paragraphs (a) and (b) of this section, FSA will:

(1) Notify appropriate State, local, regional, and Tribal governments and clearinghouses, and parties and organizations, including the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO), known to have environmental, cultural, and economic interests in the locality affected by the proposed action; and

(2) Publish notice of the proposed action in the local media.

(d) If the effects of a proposed action will set a precedent for future actions with potentially widespread effects, or the proposed action is highly controversial in nature, FSA will publish notice of the proposed action in the regional or national media, and in the **Federal Register** with a request for public comment. The public comment period will be not less than 30 days after publication in the **Federal Register**.

§ 799.16 Scoping.

(a) FSA will determine the appropriate scoping process for the NEPA analysis of a proposed action based upon the nature, complexity, and level of controversy of the proposed action.

(b) As part of its scoping process, FSA will:

(1) Invite appropriate Federal, State, and Tribal governments, and other interested parties to participate in the process, if determined necessary by FSA;

(2) Identify the significant issues to be analyzed;

(3) Identify and eliminate from further analysis issues that were determined not significant or have been adequately addressed in prior environmental reviews;

(4) Determine the roles of lead and cooperating agencies, if appropriate;

(5) Identify any related EAs or EISs;

(6) Identify other environmental reviews and consultation requirements, including NHPA requirements and State, local, regional, and Tribal requirements, so they are integrated into the NEPA process;

(7) Identify the relationship between the timing of the environmental review process and FSA's decision making process;

(8) Determine points of contact within FSA; and

(9) Establish time limits for the environmental review process.

(c) FSA may hold public meetings as part of the scoping process, if appropriate and as time permits. The process that FSA will use to determine if a public scoping meeting is needed, and how such meetings will be announced, is specified in § 799.17.

§ 799.17 Public meetings.

(a) The NECM will determine if public meetings will be held on a proposed action to:

(1) Inform the public about the details of a proposed action and its possible environmental effects;

(2) Gather information about the public concerns; and

(3) Resolve, address, or respond to issues raised by the public.

(b) In determining whether to hold a public meeting, FSA will consider whether:

(1) There is substantial controversy concerning the environmental impact of the proposed action;

(2) There is substantial interest in holding a public meeting; and

(3) Another Federal agency or Tribal government has requested a public scoping meeting and their request is warranted.

(c) FSA will publish notice of a public meeting, including the time, date and location of the meeting, in the local media or **Federal Register**, as appropriate, at least 15 days before the first meeting for EAs and at least 30 days for EISs. A notice of a public scoping meeting may be included in a Notice of Intent to prepare an EIS.

(d) If a NEPA document is to be considered at a public meeting, FSA will make the appropriate documentation available to the public at least 15 days before the meeting.

§ 799.18 Overview of FSA NEPA process.

If the proposed action:	FSA:
Is an emergency action	Follows the procedures in § 799.12.
Is exempt from section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)) by authorizing legislation for the program.	Implements the action.
Is categorically excluded under § 799.31(b) or § 1b.3 of this title	Implements the action.
Is an action that has the potential to impact historic properties as specified in § 799.34(b) and therefore requires the completion of an environmental screening worksheet.	Completes an environmental screening worksheet to determine if there will be an impact on historic properties. FSA will prepare an EA or EIS, as indicated, before implementing the action.
Is a categorically excluded action listed in § 799.32 that requires the completion of an environmental screening worksheet.	Completes an environmental screening worksheet to determine whether extraordinary circumstances are present. This review includes a determination of whether the action will potentially impact environmentally sensitive resources. If there are no extraordinary circumstances, FSA implements the action; if there are extraordinary circumstances, FSA will prepare an EA or EIS, as indicated, before implementing the action.
Involves a category of actions requiring an EA listed in § 799.41	Prepares an EA.
Involves a category of actions requiring an EIS listed in § 799.51	Prepares an EIS.

Subpart C—Environmental Screening Worksheet

§ 799.20 Purpose of environmental screening worksheet.

(a) FSA uses the environmental screening worksheet as an initial screening tool to evaluate and document any likely environmental impacts of a proposed action and to determine the appropriate type of analysis required.

(b) The environmental screening worksheet is not required for actions that are categorically excluded as specified in § 799.31(b) or § 1b.3 of this title, or for actions where FSA determines at an early stage that there is clearly the potential for environmental impact and therefore an EA or EIS is required.

§ 799.21 [Reserved]

Subpart D—Categorical Exclusions

§ 799.30 Purpose of categorical exclusion process.

(a) FSA has determined that the categories of actions listed in §§ 799.31 and 799.32 do not normally individually or cumulatively have a significant effect on the human environment and do not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of Executive Orders and other USDA regulations in this chapter.

(b) If a proposed action falls within one of the categories of actions listed in §§ 1b.3 of this title, 799.31, or 799.32, and there are no extraordinary circumstances present as specified in § 799.33, then the action is categorically excluded from the requirements to prepare an EA or an EIS.

§ 799.31 Categorical exclusions not requiring an environmental screening worksheet.

(a) Actions that fit within a category of action listed in paragraph (b) of this section may be categorically excluded if there are no extraordinary circumstances as specified in § 799.33. Unless otherwise noted in paragraph (b) of this section, the proposed actions listed in paragraph (b) of this section also do not have the potential to cause effects to historic properties, and will therefore not be reviewed for compliance with section 106 of NHPA (16 U.S.C. 470f) or its implementing regulations, 36 CFR part 800.

(b) The following actions are categorically excluded without the need to complete an environmental screening worksheet. However, some actions may require other Federal consultation as indicated. These actions are grouped into broader categories of similar types of actions. Based on FSA's previous experience implementing these actions and similar actions through the completion of EAs, these actions are categorically excluded. Those actions that are similar in nature and intent to those listed below and not listed in §§ 799.32 or 799.33, will be considered a categorical exclusion in this category:

(1) *Loan actions.* The following list includes examples of categorical exclusions for certain types of FSA loans and actions related to FSA loans. Certain types of FSA loans and loan actions typically involve limited or no ground disturbance. Therefore, the following list includes those types of FSA loans and loan actions that are categorically excluded.

(i) Closing cost payments;

(ii) Commodity loans;

(iii) Debt set asides;

(iv) Deferral of loan payments;

(v) Income producing projects associated with youth loans;

(vi) Loan consolidation;

(vii) Loans for annual operating expenses, except livestock;

(viii) Loans for equipment;

(ix) Loans for family living expenses;

(x) Loan subordination, with no or minimal construction or change in operations (may require NHPA consultation under section 106 of NHPA (16 U.S.C. 470f));

(xi) Loans to pay for labor costs;

(xii) Loan (debt) transfers and assumptions with no new ground disturbance;

(xiii) Partial or complete release of loan collateral;

(xiv) Re-amortization of loans;

(xv) Refinancing of debt;

(xvi) Rescheduling loans;

(xvii) Restructuring of loans; and

(xviii) Writing down of debt;

(2) *Repair, improvement, or minor modification actions.* The following list includes examples of categorical exclusions for proposed repair, improvement, or minor modification actions. Each of the following actions typically has no significant impact on the quality of the human environment based on previous FSA analysis and FSA compliance experience for actions in this category. These actions typically involve limited or no ground disturbance.

(i) Fence repair; and

(ii) Improvement or repair of farm-related structures under 50 years of age (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f);

(3) *Administrative actions.* The following list includes examples of categorically excluded administrative actions. These actions involve no ground disturbance and are considered administrative or operational in nature.

(i) Issuing technical corrections to regulations, handbooks, and internal guidance, as well as amendments to them;

(ii) Minor amendments or revisions to previously approved projects provided such actions do not alter the purpose, operation, location, or design of the project as originally approved;

(iii) Personnel actions, reduction-in-force, or employee transfers; and

(iv) Procurement actions for goods and services conducted in accordance with Executive Orders;

(4) *Planting actions.* The following list includes examples of categorical exclusions for planting actions that will occur on land that has been tilled in the past and do not exceed the depth of previous tillage.

(i) Bareland planting or planting without site preparation;

(ii) Bedding site establishment for wildlife;

(iii) Chiseling and subsoiling;

(iv) Clean tilling firebreaks;

(v) Conservation crop rotation;

(vi) Contour farming;

(vii) Contour grass strip establishment;

(viii) Cover crop and green manure crop planting;

(ix) Critical area planting;

(x) Firebreak installation;

(xi) Grass, forbs, or legume planting;

(xii) Heavy use area protection;

(xiii) Installation and maintenance of field borders or field strips;

(xiv) Pasture, range, and hayland planting;

(xv) Seeding of shrubs;

(xvi) Seedling shrub planting;

(xvii) Site preparation;

(xviii) Strip cropping;

(xix) Wildlife food plot planting; and

(xx) Windbreak and shelterbelt establishment;

(5) *Management actions.* The following list includes examples of land and resource management actions.

(i) Forage harvest management;

(ii) Integrated crop management;

(iii) Mulching, including plastic mulch;

(iv) Netting for hard woods;

(v) Nutrient management;

(vi) Obstruction removal;

(vii) Pest management;

(viii) Plant grafting;

(ix) Plugging artesian wells;

(x) Residue management including seasonal management;

(xi) Roof runoff management (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f);

(xii) Thinning and pruning of plants;
(xiii) Toxic salt reduction; and
(xiv) Water spreading;

(6) *Other FSA actions.* The following list includes examples of categorical exclusions for other FSA actions.

(i) Conservation easement purchases with no construction planned;

(ii) Emergency program actions (including Emergency Conservation Program and Emergency Forest Restoration Program) that have a cost share of less than $5,000;

(iii) Financial assistance to supplement income, manage the supply of agricultural commodities, influence the cost and supply of such commodities or programs of a similar nature or intent;

(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the action or participation;

(v) Inventory property disposal or lease with protective easements or covenants;

(vi) Issuance of grants under the Voluntary Public Access and Habitat Incentive Program;

(vii) Safety net programs administered by FSA;

(viii) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur, including air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment;

(ix) Stand analysis for forest management planning; and

(x) Tree protection including plastic tubes.

§ 799.32 Categorical exclusions requiring an environmental screening worksheet.

(a) The actions listed in paragraph (b) of this section are eligible for categorical exclusion after completion of an environmental screening worksheet to document that an action does not involve any of the extraordinary circumstances specified in § 799.33. Unless otherwise noted in paragraph (b) of this section, the actions listed in paragraph (b) also do not have the potential to cause effects to historic properties and will therefore not be reviewed for compliance with section 106 of NHPA or its implementing regulations, 36 CFR part 800.

(b) The following actions are eligible for categorical exclusion with completion of an environmental screening worksheet. These actions are grouped into broader categories of similar types of actions:

(1) *Loan actions.* The following list includes examples of types of loans and loan actions for which an environmental screening worksheet will be required.

(i) Farm storage and drying facility loans for added capacity;

(ii) Loans for livestock purchases;

(iii) Release of loan for forestry improvements;

(iv) Reorganizing farm operations (if new construction is planned or buildings over 50 years will be impacted, NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f)); and

(v) Replacement building loans (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));

(2) *Limited construction or repair actions.* The following list includes examples of limited construction or repair actions in areas of previous disturbance and actions that will not impact soil below previous level of disturbance.

(i) Construction in previously disturbed areas;

(ii) Construction involving an addition (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));

(iii) Drain tile replacement;

(iv) Erosion control measures;

(v) Grading, leveling, shaping, and filling;

(vi) Grassed waterway establishment;

(vii) Hillside ditches; (may require NHPA consultation under section 106 of NHPA (16 U.S.C. 470f));

(viii) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit approved forestry management plan (may require NHPA consultation under section 106 of NHPA (16 U.S.C. 470f));

(ix) Permanent establishment of a water source for wildlife;

(x) Restoring and replacing property (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));

(xi) Soil and water development;

(xii) Spring development;

(xiii) Trough or tank installation; and

(iiv) Water harvesting catchment; and

(3) *Other FSA actions.* The following list includes examples of other FSA actions for which an environmental screening worksheet will be required.

(i) Fence installation and replacement;

(ii) Fish stream improvement;

(iii) Grazing land mechanical treatment; (if disturbance will be below plow zone NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f)); and

(iv) Herbicide, insecticide, fungicide, or mineral application;

(v) Inventory property disposal or lease without protective easements or covenants (this action has the potential to cause effects to historic properties and therefore requires analysis under section 106 of NHPA (16 U.S.C. 470f)).

§ 799.33 Extraordinary circumstances.

(a) Extraordinary circumstances are unique situations presented by specific proposals. Extraordinary circumstances include, but are not limited to:

(1) Scientific controversy about environmental effects of the proposal; and

(2) Uncertain effects or effects involving unique or unknown risks.

(b) A categorical exclusion is possible in situations specified in paragraph (a) of this section only if the proposal:

(1) Is also not ''connected'' (as specified in 40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts,

(2) Is not related to other proposed actions with cumulatively significant impacts (40 CFR 1508.25(a)(2)), and

(3) Complies with 40 CFR 1506.1, ''Limitations on actions during NEPA process.''

(c) FSA will use an environmental screening worksheet (ESW) to review proposed actions that are eligible for categorical exclusion to determine if extraordinary circumstances exist that could impact environmentally sensitive resources. If extraordinary circumstances exist, then an EA or EIS will be prepared as specified in this part.

(d) Environmentally sensitive resources include, but are not limited to:

(1) Property (for example, sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by Federal, Tribal, State, or local governments or property eligible for listing on the National Register of Historic Places;

(2) Federally-listed threatened or endangered species or their habitat (including critical habitat), Federally-proposed or candidate species or their habitat, or State-listed endangered or threatened species or their habitat;

(3) Important and prime agricultural, forest, and range lands, as specified in part 657 of this chapter and in USDA Departmental Regulation 9500–3;

(4) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344), highly erodible land, and floodplains;

(5) Areas having a special designation, such as Federally- and State-designated

wilderness areas, national parks, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, and marine sanctuaries; and

(6) Special sources of water such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region.

§ 799.34 Review for extraordinary circumstances.

(a) FSA will complete an environmental screening worksheet for proposed actions that fall within the list of categorical exclusions specified in § 799.32 to determine whether extraordinary circumstances under § 799.33 are present.

(b) FSA or an authorized technical representative will also complete an ESW to determine whether to prepare an EA or EIS for the following actions, unless technical assistance is provided by another Federal agency that uses its own environmental screening documentation and provide the information called for in an ESW. These actions have the potential to cause effects to historic properties, and therefore analysis is required for compliance under section 106 of the NHPA (16 U.S.C. 470f). FSA will comply with 36 CFR part 800, ''Protection of Historic Properties,'' when reviewing the environmental impact of these actions. If an authorized technical representative from another Federal agency assists with compliance with 36 CFR part 800, FSA will remain responsible for any consultation with SHPO, THPO, or Tribal governments. These actions are grouped into broader categories of similar types of actions. All of the categories include, but are not limited to, the specific actions listed in this section; other actions that are similar in nature will also require review for extraordinary circumstances that would require either an EA or EIS:

(1) *Loan actions.* Although most loan actions are addressed in §§ 799.31 and 799.32, the following actions have the potential for significant impacts on resources. Additional environmental review will therefore be necessary. An environmental screening worksheet must be completed to determine if an EA or EIS should be completed.

(i) Loans and loan subordination with construction, demolition, or ground disturbance planned;

(ii) Real estate purchase loans with new ground disturbance planned; and

(iii) Term operating loans with construction or demolition planned;

(2) *Construction with ground disturbance actions.* The following list includes examples of construction actions for which an environmental screening worksheet will be required to determine if an EA or EIS will be needed. The ground disturbance of the construction actions in this category have the potential for impacts and therefore additional environmental review is required.

(i) Animal trails and walkways;

(ii) Bridges;

(iii) Chiseling and subsoiling in areas not previously tilled;

(iv) Construction of a new farm storage facility;

(v) Dams;

(vi) Dikes and levees;

(vii) Diversions;

(viii) Drop spillways;

(ix) Dugouts;

(x) Excavation;

(xi) Grade stabilization structures;

(xii) Grading, leveling, shaping and filling in areas not previously disturbed;

(xiii) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;

(xiv) Irrigation systems;

(xv) Land smoothing;

(xvi) Line waterways or outlets;

(xvii) Lining;

(xviii) Livestock crossing facilities;

(xix) Pesticide containment facility;

(xx) Pipe drop;

(xxi) Pipeline for watering facility;

(xxii) Ponds, including sealing and lining;

(xxiii) Precision land farming with ground disturbance;

(xxiv) Riparian buffer establishment;

(xxv) Roads, including access roads;

(xxvi) Rock barriers;

(xxvii) Rock filled infiltration trenches;

(xxvii) Sediment basin;

(xxix) Sediment structures;

(xxx) Site preparation for planting or seeding in areas not previously tilled;

(xxxi) Soil and water conservation structures;

(xxxii) Stream bank and shoreline protection;

(xxxiii) Structures for water control;

(xxxiv) Subsurface drains;

(xxxv) Surface roughening;

(xxxvi) Terracing;

(xxxvii) Underground outlets;

(xxxviii) Watering tank or trough installation, if in areas not previously disturbed;

(xxxix) Wells; and

(xl) Wetland restoration; and

(3) *Management and planting type actions.* The following list includes examples of resource management and planting actions for which an environmental screening worksheet will be required to determine if an EA or EIS will be needed. The actions in this category have been found to have the potential for impacts and therefore additional environmental review is required.

(i) Establishing or maintaining wildlife plots in areas not previously tilled or disturbed;

(ii) Prescribed burning;

(iii) Tree planting when trees have root balls of one gallon container size or larger; and

(iv) Wildlife upland habitat management.

(c) If technical assistance is provided by another Federal agency, FSA will ensure that the environmental documentation provided is commensurate to or exceeds the requirements of the FSA environmental screening worksheet.

§ 799.35 Establishing and revising categorical exclusions.

(a) As part of the process to establish a new categorical exclusion, FSA will consider all relevant information, including the following:

(1) Completed FSA NEPA documents;

(2) Other Federal agency NEPA documents on actions that could be considered similar to the categorical exclusion being considered;

(3) Results of impact demonstration or pilot projects;

(4) Information from professional staff, expert opinion, and scientific analyses; and

(5) The experiences of FSA, private, and public parties that have taken similar actions.

(b) FSA will consult with CEQ and appropriate Federal agencies while developing or modifying a categorical exclusion.

(c) Before establishing a new final categorical exclusion, FSA will:

(1) Publish a notice of the proposed categorical exclusion in the **Federal Register** for public review and comment for at least 30 calendar days;

(2) Consider the public comments in developing the final categorical exclusion;

(3) Consult with CEQ on the final categorical exclusion and obtain a written statement from CEQ that the final categorical exclusion was developed in conformity with NEPA requirements and CEQ regulations;

(4) Publish the final categorical exclusion in the **Federal Register**; and

(5) Post the final categorical exclusion on the FSA Web site.

(d) FSA will maintain an administrative record that includes the supporting information and findings used in establishing a categorical exclusion.

(e) FSA will periodically review its categorical exclusions at least once

every seven years to identify and revise exclusions that no longer effectively reflect environmental circumstances or current FSA program scope.

(f) FSA will use the same process specified in this section and the results of its periodic reviews to revise a categorical exclusion or remove a categorical exclusion.

Subpart E—Environmental Assessments

§ 799.40 Purpose of an EA.

(a) FSA prepares an EA to determine whether a proposed action would significantly affect the environment and to consider the potential impact of reasonable alternatives and the potential mitigation measures to the alternatives and proposed action.

(b) FSA may determine that a proposed action will significantly affect the environment or is environmentally controversial without first preparing an EA. In that case, FSA will prepare an EIS as specified in subpart F of this part.

(c) FSA will prepare a programmatic EA to determine if proposed actions that are broad in scope or similar in nature have cumulative significant environmental impacts, although the impacts of the actions may be individually insignificant.

(d) The result of the EA process will be either a FONSI or a determination that an EIS is required.

§ 799.41 When an EA is required.

(a) Actions that require the preparation of an EA include the following:

(1) Conservation Reserve Enhancement Program (CREP) agreements;

(2) Development of farm ponds or lakes greater than or equal to 20 acres;

(3) Restoration of wetlands greater than or equal to 100 acres aggregate;

(4) Installation or enlargement of irrigation facilities, including storage reservoirs, diversions, dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate greater than 320 acres aggregate;

(5) Land clearing operations involving greater than or equal to 40 acres aggregate;

(6) Clear cutting operations for timber involving greater than or equal to 100 acres aggregate;

(7) Construction or enlargement of aquaculture facilities when the capacity is either 20,000 pounds for cold water flow through systems or 100,000 pounds for warm water confined systems;

(8) Construction of commercial facilities or structures;

(9) Construction or expansion of a CAFO, regardless of the type of manure handling system or water system;

(10) Refinancing of a newly constructed CAFO, including medium CAFOs, as defined in 40 CFR 122.23, or aquaculture facilities that have been in operation for 12 months or less;

(11) Issuance of FSA regulations, **Federal Register** notices, or amendments to existing programs that authorize FSA or CCC funding for actions that have the potential to adversely affect the human environment;

(12) Newly authorized programs that involve actions specified in § 799.34;

(13) Any FSA action that after completion of the environmental screening worksheet for extraordinary circumstances specified in § 799.33(b) has been determined to have a potentially significant impact on the quality of the human environment; and

(14) Any action that will involve the planting of a potential invasive species, unless exempted by Federal law.

(b) [Reserved]

§ 799.42 Contents of an EA.

(a) The EA must include at least the following:

(1) FSA cover sheet;

(2) Executive summary;

(3) Table of contents;

(4) List of acronyms;

(5) A discussion of the purpose of and need for the proposed action;

(6) A discussion of alternatives, if the proposal involves unresolved conflicts concerning the uses of available resources;

(7) A discussion of environmental impacts of the proposed action, with reference to the significance of the impact as specified in § 799.8 and 40 CFR 1508.27;

(8) Likelihood of any significant impact and potential mitigation measures to include those FSA will undertake to support a FONSI;

(9) A list of preparers and contributors;

(10) A list of agencies and persons consulted;

(11) References; and

(12) Appendixes, if appropriate.

(b) FSA will prepare a Supplemental EA, and place the supplements in the administrative record of the original EA, if:

(1) Substantial changes occur in the proposed action that are relevant to environmental concerns previously presented, or

(2) Significant new circumstances or information arise that are relevant to environmental concerns and to the proposed action or its impacts.

(c) FSA may request that a program participant prepare or provide information for FSA to use in the EA and may use the program participant's information in the EA or Supplemental EA provided that FSA also:

(1) Independently evaluates the environmental issues; and

(2) Takes responsibility for the scope and content of the EA.

§ 799.43 Adoption of an EA prepared by another entity.

(a) FSA may adopt an EA prepared by another Federal agency, State, or Tribal government if the EA meets the requirements of this subpart.

(b) If FSA adopts another agency's EA and issues a FONSI, FSA will follow the procedures specified in § 799.44.

§ 799.44 Finding of No Significant Impact (FONSI).

(a) If after completing the EA, FSA determines that the proposed action will not have a significant effect on the quality of the human environment, FSA will issue a FONSI.

(b) The FONSI will include the reasons FSA determined that the proposed action will have no significant environmental impacts.

(c) If the decision to issue the FONSI is conditioned upon the implementation of measures (mitigation actions) to ensure that impacts will be held to a nonsignificant level, the FONSI must include an enforceable commitment to implement such measures on the part of FSA, and any applicant or other party responsible for implementing the measures will be responsible for the commitments outlined in the FONSI.

(d) FSA will make the FONSI available to the public prior to making a decision as specified in 40 CFR 1506.6, including publishing a notice of availability of the final EA and FONSI in the local media or **Federal Register** as appropriate.

(e) FSA will make the final EA and FONSI available for public review for at least 15 days before taking any final agency action. FSA will determine whether an EIS is required based in part on the comments received during such review.

Subpart E—Environmental Impact Statements

§ 799.50 Purpose of an EIS.

(a) FSA will prepare an EIS for proposed actions that are expected to have a significant effect on the human environment. The purpose of the EIS is to ensure that all significant environmental impacts and reasonable alternatives are fully considered in connection with the proposed action.

(b) FSA will prepare a PEIS for proposed actions that are broad in scope or similar in nature and may cumulatively have significant environmental impacts, although the impact of the individual actions may be insignificant.

§ 799.51 When an EIS is required.

(a) The following FSA actions normally require preparation of an EIS:

(1) Legislative proposals, not including appropriations requests, with the potential for significant environmental impact that are drafted and submitted to Congress by FSA;

(2) Broad Federal assistance programs administered by FSA involving significant financial assistance or payments to program participants that may have significant cumulative impacts on the human environment or national economy; and

(3) Ongoing programs that have been found through previous environmental analyses to have major environmental concerns.

(b) [Reserved]

§ 799.52 Notice of intent to prepare an EIS.

(a) FSA will publish a Notice of Intent to prepare an EIS in the **Federal Register** and, depending on the scope of the proposed action, may publish a notice in other media.

(b) The notice will include the following:

(1) A description of the proposed action and possible alternatives;

(2) A description of FSA's proposed scoping process, including information about any public meetings; and

(3) The name of an FSA point of contact who can receive input and answer questions about the proposed action and the preparation of the EIS.

§ 799.53 Contents of an EIS.

(a) FSA will prepare the EIS as specified in 40 CFR part 1502.

(b) The EIS must include at least the following:

(1) An FSA cover sheet;

(2) An executive summary explaining the major conclusions, areas of controversy, and the issues to be resolved;

(3) A table of contents;

(4) List of acronyms and abbreviations;

(5) A brief statement explaining the purpose and need of the proposed action;

(6) A detailed discussion of the environmental impacts of the proposed action and reasonable alternatives to the proposed action, a description and brief analysis of the alternatives considered but eliminated from further consideration, the no-action alternative, FSA's preferred alternative(s), and discussion of appropriate mitigation measures;

(7) A discussion of the affected environment;

(8) A detailed discussion of:

(i) The direct and indirect environmental consequences, including any cumulative impacts, of the proposed action and of the alternatives;

(ii) Any unavoidable adverse environmental effects;

(iii) The relationship between local short-term uses of the environment and long-term ecosystem productivity;

(iv) Any irreversible and irretrievable commitments of resources;

(vi) Possible conflicts with the objectives of Federal, regional, State, local, regional, and Tribal land use plans, policies, and controls for the area concerned;

(vii) Energy and natural depletable resource requirements, and conservation potential of the alternatives and mitigation measures; and

(viii) Urban quality, historic, and cultural resources and the design of the built environment, including the reuse and conservation potential of the alternatives and mitigation measures;

(9) In the draft EIS, a list of all Federal permits, licenses, and other entitlements that must be obtained for implementation of the proposal;

(10) A list of preparers;

(11) Persons and agencies contacted;

(12) References, if appropriate;

(13) Glossary, if appropriate;

(14) Index;

(15) Appendixes, if appropriate;

(16) A list of agencies, organizations, and persons to whom copies of the EIS are sent; and

(17) In the final EIS, a response to substantive comments on environmental issues.

(c) FSA may have a contractor prepare an EIS as specified in 40 CFR 1506.5(b). If FSA has a contractor prepare an EIS, FSA will:

(1) Require the contractor to sign a disclosure statement specifying it has no financial or other interest in the outcome of the action, which will be included in the Administrative Record; and

(2) Furnish guidance and participate in the preparation of the EIS, and independently evaluate the EIS before its approval.

§ 799.54 Draft EIS.

(a) FSA will prepare the draft EIS addressing the information specified in § 799.53.

(b) FSA will circulate the draft EIS as specified in 40 CFR 1502.19.

(c) FSA will request comments on the draft EIS from:

(1) Any Federal agency that has jurisdiction by law or has special expertise with respect to the environmental impact involved or is authorized to develop and enforce environmental standards;

(2) Appropriate State and local agencies authorized to develop and enforce environmental standards relevant to the scope of the EIS;

(3) Tribal governments that have interests that could be impacted;

(4) Any agency that requested to receive statements on the type of action proposed;

(5) The public, particularly persons or organizations who may be interested or affected;

(6) If the action affects historic properties, the appropriate SHPO, THPO, and the Advisory Council on Historic Preservation; and

(7) An applicant or program participant, if applicable.

(d) FSA will file the draft EIS with the Environmental Protection Agency as specified in 40 CFR 1506.9 and in accordance with the EPA filing requirements (available at *http://www.epa.gov/compliance/nepa/submiteis/index.html*).

(e) The draft EIS will include a cover sheet with the information specified in 40 CFR 1502.11.

(f) FSA will provide for a minimum 45-day comment period calculated from the date the Environmental Protection Agency publishes the NOA of the draft EIS.

§ 799.55 Final EIS.

(a) FSA will prepare the final EIS addressing the information specified in § 799.53.

(b) FSA will evaluate the comments received on the draft EIS and respond in the final EIS as specified in 40 CFR 1503.4. FSA will discuss in the final EIS any issues raised by commenters that were not discussed in the draft EIS and provide a response to those comments.

(c) FSA will attach substantive comments, or summaries of lengthy comments, to the final EIS and will include all comments in the administrative record.

(d) FSA will circulate the final EIS as specified in 40 CFR 1502.19.

(e) FSA will file the final EIS with the Environmental Protection Agency as specified in 40 CFR 1506.9.

(f) The final EIS will include a cover sheet with the information specified in 40 CFR 1502.11.

§ 799.56 Supplemental EIS.

(a) FSA will prepare supplements to a draft or final EIS if:

(1) Substantial changes occur in the proposed action that are relevant to environmental concerns previously presented; or

(2) Significant new circumstances or information arise that are relevant to environmental concerns and to the proposed action or its impacts.

(b) The requirements of this subpart for completing the original EIS apply to the supplemental EIS, with the exception of the scoping process, which is optional.

§ 799.57 Tiering.

(a) As specified in 40 CFR 1508.28, tiering is a process of covering general environmental review in a broad programmatic EIS, followed by subsequent narrower scope analysis to address specific actions, action stages, or sites. FSA will use tiering when FSA prepares a broad programmatic EIS and subsequently prepares a site-specific EA or PEA for a proposed action included within the program addressed in the original, broad programmatic EIS.

(b) When FSA uses tiering, the subsequent EA or PEA will:

(1) Summarize the issues discussed in the broader statement;

(2) Incorporate by reference the discussions from the broader statement and the conclusions carried forward into the subsequent tiered analysis and documentation; and

(3) State where the programmatic EIS document is available.

§ 799.58 Adoption of an EIS prepared by another entity.

(a) FSA may elect to adopt an EIS prepared by another Federal agency, State, or Tribal government if:

(1) The NECM determines that the EIS and the analyses and procedures by which they were developed meet the requirements of this part; and

(2) The agency responsible for preparing the EIS concurs.

(b) If FSA participated in the NEPA process as a cooperating agency, FSA may adopt the lead agency's final EIS and reference it in the FSA ROD. However, the NECM must independently review the EIS and determine that FSA requirements in this part have been satisfied.

(c) If FSA was not a cooperating agency but the FSA action is substantially the same as the subject of another agency's EIS, the NECM may adopt the EIS and recirculate it as a final EIS. However, the NECM must independently review the EIS and determine that FSA requirements in this part have been satisfied. The final EIS must identify the other Federal action involved.

(d) If the FSA action is not substantially the same as the subject of another agency's EIS, FSA may incorporate by reference the relevant portions of the EIS into the FSA draft EIS. The draft EIS must include the content specified in § 799.53. The NECM must inform the agency that prepared the original EIS of FSA's intent and the proposed FSA action for which the EIS will be used.

(e) If an adopted EIS is not final, or it is subject to a referral to CEQ as specified in 40 CFR part 1504, or the EIS's adequacy is the subject of a judicial action that is not final, the NECM must include an explanation in the FSA EIS why adoption of the EIS was appropriate.

§ 799.59 Record of decision.

(a) FSA will issue an ROD within the time periods specified in 40 CFR 1506.10(b) but no sooner than 30 days after the Environmental Protection Agency's publication of the NOA of the final EIS. The ROD will:

(1) State the decision reached;

(2) Identify all alternatives considered by FSA in reaching its decision, specifying the alternative or alternatives considered to be environmentally preferable;

(3) Identify and discuss all factors, including any essential considerations of national policy, which were balanced by FSA in making its decision, and state how those considerations entered into its decision; and

(4) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and, if not, explain why these mitigation measures were not adopted.

(b) FSA will distribute the ROD to all parties who request it.

(c) FSA will publish the ROD or a notice of availability of the ROD in the **Federal Register**.

7 CFR CHAPTER XIV—COMMODITY CREDIT CORPORATION

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

■ 28. The authority citation for part 1436 continues to read as follows:

Authority: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714–714p.

§ 1436.17 [Removed]

■ 29. Remove § 1436.17.

7 CFR CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS–COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1940—GENERAL

■ 30. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart G—Environmental Program

■ 31. Amend § 1940.301 by adding paragraph (i) to read as follows:

§ 1940.301 Purpose.

* * * * *

(i) This subpart does not apply to the Farm Service Agency Farm Loan Programs. (See part 799 of this title for the Farm Service Agency NEPA implementing regulations.)

■ 32. Revise Exhibit M to Subpart G of Part 1940 to read as follows:

Exhibit M to Subpart G of Part 1940—Conservation of Wetlands and Highly Erodible Land Affecting Farm Loan Programs and Loans to Indian Tribes and Tribal Corporations

The Farm Service Agency consolidated the Farm Loan Programs NEPA implementing regulations into part 799 of this title. (The swampbuster and sodbuster provisions previously contained in Exhibit M do not apply to the Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service.) Therefore, see part 799 of this title for information related to the Farm Service Agency's NEPA implementing regulations; see part 12 of this title for information related to highly erodible land and wetland conservation; and see parts 761 through 774 of this title for information related to Farm Loan Programs.

Signed on August 25, 2014.

Juan M. Garcia,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

Signed on August 26, 2014.

Douglas J. O'Brien,

Acting Under Secretary, Rural Development.

[FR Doc. 2014–20836 Filed 9–2–14; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0621; Directorate Identifier 2013–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 series airplanes, and Model Avro 146–RJ series airplanes. This proposed AD was prompted by a report of a pressurization problem on an airplane during climb-out; a subsequent investigation showed a crack in the fuselage skin. This proposed AD would require repetitive external eddy current inspections on the aft skin lap joints of the rear fuselage for cracking, corrosion, and other defects, and repair if necessary. We are proposing this AD to detect and correct cracking, corrosion, and other defects, which could affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 20, 2014.

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

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

For service information identified in this proposed AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0621; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0621; Directorate Identifier 2013–NM–201–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0207, dated September 9, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all BAE Systems (Operations) Limited Model BAe 146 series airplanes, and Model Avro 146–RJ series airplanes. The MCAI states:

In 2012, a pressurisation problem occurred on an AVRO 146–RJ100 aeroplane during climb-out. Subsequent investigation results identified a 42.87 inch (1089 mm) long crack in the fuselage skin in the rear fuselage drum, near the rear passenger door. The skin crack had initiated in the step of the skin land adjacent to a lap joint. In addition to the skin crack, cracks were found in Frames 41X and 42.

This condition, if not detected and corrected, could lead to degradation of the structural integrity of the aeroplane.

Prompted by this finding, BAE Systems (Operations) Ltd issued Inspection Service Bulletin (ISB) 53–239, providing instructions to inspect the internal area of the rear fuselage drum for cracks, corrosion and any other defects and EASA issued AD 2012–0178 [*http://ad.easa.europa.eu/blob/easa_ad_2012_0178_Superseded.pdf/AD_2012-0178_1*] which required accomplishment of a one-time inspection of the affected fuselage area and, depending on findings, repair of cracked structural items. Following the issuance of that [EASA] AD, some new information on additional damage found on the aeroplane that had the pressurisation problem resulted in a further review of the cracking event. This review concluded that the event was more serious than previously considered and that the compliance time must be reduced in order to mitigate the risk of cracking on other aeroplanes. As a result, EASA issued AD 2012–0184 [*http://ad.easa.europa.eu/blob/easa_ad_2012_0184_superseded.pdf/AD_2012-0184_1*] which superseded EASA AD 2012–0178.

After analysing the responses to EASA AD 2012–0184, which covered the initial inspection of stringer 30, left hand (LH) and right hand (RH), BAE Systems (Operations) Ltd also assessed the similar design features at other skin lands in the rear fuselage drum, namely at stringer 2 right and stringers 11 and 18, LH and RH. As a result, they determined that inspections at the other stringers would be required and also that repeat inspections of all these stringers would be necessary. Consequently, BAE Systems (Operations) Ltd ISB.53–239 Revision 1 and 2 were issued to include these new inspections.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0184, which is superseded, and requires accomplishment of additional inspections of the affected fuselage area, including repetitive inspections, and depending on findings, repair of cracked structural items.

The required actions include repetitive external eddy current inspections on the aft skin lap joints of the rear fuselage for cracking, corrosion, and other defects, and repair if necessary. 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–2014–0621.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin

53–239, Revision 2, dated July 15, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

EASA AD 2013–0207, dated September 9, 2013, specifies that, if any cracking, corrosion, or any other irregularity is detected during any inspection required by paragraph (1) of the EASA AD, owners/operators must contact BAE Systems (Operations) Limited before further flight for approved repair instructions, and within the compliance time specified in those instructions, must accomplish the repair accordingly. This AD requires that if any cracking, corrosion, or any other irregularity is found during any inspection, owners/operators must repair before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). This difference has been coordinated with EASA.

''Contacting the Manufacturer'' Paragraph in This Proposed AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or BAE Systems (Operations) Limited's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 1 airplane of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle	$680 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited: Docket No. FAA–2014–0621; Directorate Identifier 2013–NM–201–AD.

(a) Comments Due Date

We must receive comments by October 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by a report of a pressurization problem on an airplane during climb-out; a subsequent investigation showed a crack in the fuselage skin. We are issuing this AD to detect and correct cracking, corrosion, and other defects, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

(1) Within the compliance times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD, as applicable: Do an external eddy current inspection on the aft skin lap joints of the rear fuselage for cracking, corrosion, and other defects (i.e. surface damage and spot displacement), in accordance with paragraph 2.C. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 2, dated July 15, 2013.

(i) For any airplane which has accumulated 9,000 flight cycles or more since the airplane's first flight as of the effective date of this AD: Do the inspection within 1,000 flight cycles or 6 months after of the effective date of this AD, whichever occurs first.

(ii) For any airplane which has accumulated less than 9,000 flight cycles since the airplane's first flight as the effective date of this AD: Do the inspection before accumulating 10,000 flight cycles since the airplane's first flight.

(2) Repeat the inspection required by paragraph (g)(1) of this AD thereafter at intervals not to exceed the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, as applicable to the airplane's modification status.

(i) For Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes post modification HCM50070E, or post modification HCM50070F, or post modification HCM50259A, repeat the inspection at intervals not to exceed 4,000 flight cycles.

(ii) For Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes pre-modification HCM50070E, and pre-modification HCM50070F, and pre-modification HCM50259A, repeat the inspection at intervals not to exceed 7,500 flight cycles.

(h) Corrective Action

If any cracking, corrosion, or other defect is found during any inspection required by this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. Accomplishment of the repair does not constitute a terminating action for the inspections required by paragraph (g) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the initial inspection and corrective action on stringer 30, left hand (LH) and right hand (RH), as required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, dated June 13, 2012, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the initial inspection and corrective action, as required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using BAE Systems (Operations) Limited Inspection Service Bulletin 53–239, Revision 1, dated June 18, 2013, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0207, dated September 9, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0621.

(2) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 25, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20943 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0618; Directorate Identifier 2012–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2008–06–18, for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes) and Model A300 series airplanes. AD 2008–06–18 currently requires repetitive inspections for any cracking of the wing lower skin panel and associated internal support structure, and if necessary, corrective actions such as modifying the lower panel inboard of rib 9 aft of the rear spar and repairing cracks. Since we issued AD 2008–06–18, we have received a report that information from an analysis and fleet survey show a need for reduced compliance times and intervals. This proposed AD would continue to require the existing requirements, and would reduce some compliance times. We are proposing this AD to detect and correct cracking, which could lead to reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 20, 2014.

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

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

For service information identified in this proposed AD, contact Airbus SAS Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0618; Directorate Identifier 2012–NM–171–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 7, 2008, we issued AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008). AD 2008–06–18 requires actions intended to address an unsafe condition on all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes) and Model A300 series airplanes.

Since we issued AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008), we have received a report that information from an analysis and fleet survey show a need for reduced compliance times and intervals.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0203, dated October 1, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes) and Model A300 series airplanes. The MCAI states:

> During routine maintenance, cracks were found in the wing bottom skin and in the associated internal support structure on an A300 aeroplane aft of the rear spar and inboard of rib 9. Initially, cracks were found in the skin only, starting from a fastener close to the forward outboard corner of access panel 575FB/675FB. Subsequently, cases were reported of cracks being found in the skin support strap and the stiffener.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To address this unsafe condition, EASA issued AD 2006–0282 [*http://ad.easa.europa.eu/ad/2006-0282*] [which corresponds with FAA AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008)] to require repetitive inspections of the wing lower skin panel and associated internal support structure aft of the rear spar and inboard of rib 9.
>
> Since that [EASA] AD was issued, the results of a fleet survey and updated Fatigue and Damage Tolerance analysis, which were performed in order to substantiate the second A300 and A300–600 Extended Service Goal (ESG2) exercise, revealed that the inspection threshold and interval had to be reduced to allow timely detection of cracks and the accomplishment of an applicable corrective action.
>
> Prompted by these findings, Airbus issued Revision 05 of Airbus Service Bulletin (SB) A300–57–0177 and Revision 07 of Airbus SB A300–57–6029.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2006–0282, which is superseded, but requires the accomplishment of those actions within reduced thresholds and intervals.

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–2014–0618.

Relevant Service Information

Airbus has issued Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013. The compliance times for the initial inspections range approximately from 160 flight cycles or 270 flight hours, whichever occurs first, to 49,300 flight cycles or 98,700 flight hours, whichever occurs first, depending on the model and configuration. The repetitive intervals range from 30 flight cycles or 40 flight hours, whichever occurs first, to 3,800 flight cycles or 7,700 flight hours, whichever occurs first, depending on the model and configuration. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Changes to AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008)

This proposed AD would retain all requirements of AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008). Since AD 2008–06–18 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)

Paragraph (f)(3) of AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008), contains a typographical error. That error resulted in a reference to paragraph ''(e)(f)(ii)'' of AD 2008–06–18. The correct reference is to paragraph (f)(3)(ii) of AD 2008–06–18. Since the AD format has been revised and certain paragraphs have been rearranged, the reference is now to paragraph (g)(3)(ii) of the proposed AD.

''Contacting the Manufacturer'' Paragraph in This Proposed AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the

requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or Airbus's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 162 airplanes of U.S. registry.

The actions that are required by AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008), and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2008–06–18 is $170 per product.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $27,540, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 12 work-hours and require parts costing $10,000, for a cost of $11,020 per product. We have no way of determining the number of aircraft that might need these actions.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008), and adding the following new AD:

Airbus: Docket No. FAA–2014–0618; Directorate Identifier 2012–NM–171–AD.

(a) Comments Due Date

We must receive comments by October 20, 2014.

(b) Affected ADs

This AD replaces AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, all certified models, all serial numbers.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Airbus Model A300 B4–605R and B4–622R airplanes.

(4) Airbus Model A300 F4–605R and F4–622R airplanes.

(5) Airbus Model A300 C4–605R Variant F airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by a report that information from an analysis and fleet survey show a need for reduced compliance times and intervals. We are issuing this AD to detect and correct cracking, which could lead to reduced structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Actions and Compliance Times With Revised Service Information

This paragraph restates the requirements of paragraph (f) of AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008), with revised service information. Unless already done, do the following actions.

(1) Except as provided by paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), and (h) of this AD: At the threshold specified in paragraph 1.E.(2) of Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007 (for Model A300 series airplanes); Airbus Service Bulletin A300–57–6029, Revision 06, dated March 23, 2007 (for Model A300–600 series airplanes); or Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013 (for Model A300–600 series airplanes); as applicable; perform the inspection of the wing lower skin panel and associated internal support structure aft of the rear spar and inboard of rib 9 and apply applicable corrective measures in accordance with Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007 (for Model A300 series airplanes); or Airbus Service Bulletin A300–57–6029, Revision 06, dated March 23, 2007 (for Model A300–600 series airplanes); or Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013 (for Model A300–600 series airplanes); as applicable. All applicable corrective measures must be done at the applicable times specified in paragraph 1.E.(2) and the Accomplishment Instructions of Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007 (for Model A300 series airplanes); Airbus Service Bulletin A300–57–6029, Revision 06, dated March 23, 2007 (for Model A300–600 series airplanes); or Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013 (for Model A300–600 series airplanes); as applicable. Accomplishing the requirements of paragraph (h) of this AD terminates the requirements of this paragraph for Model A300–600 airplanes.

(i) Where the tables in paragraph 1.E.(2), ''Accomplishment Timescale,'' of Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007; A300–57–6029, Revision 06, dated March 23, 2007; specify a grace period for doing the actions, this AD requires that the actions be done within the specified grace period relative to April 23, 2008 (the effective date of AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008)).

(ii) Where the tables in paragraph 1.E.(2)(e), ''Config 04,'' of Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007, specify an inspection interval but not an initial threshold, this AD requires that the actions be done within the specified interval after inspecting in accordance with Table 1A or 1B, as applicable, for Configuration 01 airplanes described in the service bulletin and thereafter at the inspection interval specified in the tables in paragraph 1.E.(2)(e), ''Config 04,'' of Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007.

(iii) Where the tables in paragraph 1.E.(2)(f), ''Config 05,'' of Airbus Service Bulletin A300–57–6029, Revision 06, dated March 23, 2007, specify an inspection interval but not an initial threshold, this AD requires that the actions be done within the specified interval after inspecting in accordance with Table 1A, or 1B, as applicable, for configuration 01 of Airbus Service Bulletin A300–57–6029, Revision 06, dated March 23, 2007, and thereafter at the inspection interval specified in the tables in paragraph 1.E.(2)(f), ''Config 05,'' of Airbus Service Bulletin A300–57–6029, Revision 06, dated March 23, 2007.

(iv) All crack lengths specified in Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007; and A300–57–6029, Revision 06, dated March 23, 2007, are considered ''not to exceed'' lengths.

(2) Repeat the inspection at the intervals in, and according to the instructions defined in, Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007 (for Model A300 series airplanes); Airbus Service Bulletin A300–57–6029, Revision 06, dated March 23, 2007 (for Model A300–600 series airplanes); or Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013 (for Model A300–600 series airplanes); as applicable; except where Airbus Service Bulletin A300–57–0177, Revision 05, dated March 23, 2007, specifies repetitive inspections for cracking if Airbus Service Bulletin A300–57–022 has not been embodied, this AD requires doing repetitive inspections for cracking if Airbus Service Bulletin A300–57–0222 (modification 11178H5410) has not been embodied.

(3) Report to Airbus the first inspection results, whatever they may be, at the applicable time specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD.

(i) If the inspection was done after April 23, 2008 (the effective date of AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008)), submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to April 23, 2008 (the effective date of AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008)), submit the report within 30 days after April 23, 2008.

(h) New Requirement of This AD: New Compliance Times for Model A300–600 Airplanes

For Model A300–600 airplanes, do the actions specified in paragraphs (h)(1) through (h)(3) of this AD at the applicable times specified in those paragraphs.

(1) Except as provided by paragraphs (h)(1)(i) and (h)(1)(ii) of this AD: Within the compliance times specified in Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013, perform the inspection of the wing lower skin panels and associated internal support structures aft of the rear spar and inboard of rib 9, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013. Thereafter, repeat these inspections at intervals specified in Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013. Accomplishment of the actions required by this paragraph terminates the requirements of paragraph (g) of this AD for Model A300–600 airplanes.

(i) Where the tables in paragraph 1.E.(2), ''Accomplishment Timescale,'' of Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013, specify a grace period for doing the actions for airplanes that have exceeded the thresholds, this AD requires, for all airplanes, that the actions be done within the specified grace period after the effective date of this AD or before the specified thresholds, whichever occurs later.

(ii) Where Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013, specifies to ''contact Airbus'' before further flight, this AD requires repairing using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA); and accomplishing those actions before further flight. If approved by the DOA, the approval must include the DOA-authorized signature.

(2) If, during any inspection as required by paragraph (h)(1) of this AD, discrepancies are detected, before next flight, accomplish the applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6029, Revision 08, dated April 25, 2013.

(3) Corrective actions, as required by paragraph (h)(2) of this AD, do not constitute terminating action for the repetitive inspection requirements of paragraph (h)(1) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD,

if those actions were performed before April 23, 2008 (the effective date of AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008)), using the applicable service information identified in paragraphs (i)(1)(i) through (i)(1)(iv) of this AD, which are not incorporated by reference by this AD.

(i) Airbus Service Bulletin A300–57–0177, Revision 03, dated May 29, 2006.

(ii) Airbus Service Bulletin A300–57–0177, Revision 04, dated January 5, 2007.

(iii) Airbus Service Bulletin A300–57–6029, Revision 04, dated May 29, 2006.

(iv) Airbus Service Bulletin A300–57–6029, Revision 05, dated October 23, 2006.

(2) This paragraph provides credit for actions required by paragraph (g) or (h) of this AD, if those actions were performed before the effective date of this AD, using Airbus Service Bulletin A300–57–6029, Revision 07, dated June 6, 2011, which is not incorporated by reference by this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously for AD 2008–06–18, Amendment 39–15430 (73 FR 14670, March 19, 2008) are considered acceptable for this AD.

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0203, dated October 1, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0618.

(2) For service information identified in this AD, contact Airbus SAS Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 23, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20917 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0589; Directorate Identifier 2014–NM–069–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318–111 and –112 airplanes, Model A319, A320, and A321 series airplanes. This proposed AD was prompted by reports of cracks on the forward corner fittings of engine pylon aft secondary structures. This proposed AD would require repetitive inspections of certain forward corner fittings of the pylon aft secondary structures, and corrective actions if necessary. This proposed AD also provides optional terminating action for the repetitive inspections. We are proposing this AD to detect and correct detachment of the lower fairing attachment and/or loss of the aft fixed fairing with the movable fairing from the airplane in flight, which could result in damage to the airplane.

DATES: We must receive comments on this proposed AD by October 20, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0589; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0589; Directorate Identifier 2014–NM–069–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0064, dated March 14, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Model A318–111 and –112 airplanes, Model A319 series airplanes, Model A320 series airplanes, and Model A321 series airplanes. The MCAI states:

> Several operators of A320 family aeroplanes have reported finding cracks on the forward corner fittings of engine pylon aft secondary structures, on the lateral face (lateral panel side). In some cases, these cracks had propagated onto the forward face (Rib 11 side). Investigation results have highlighted that these cracks are initiated by stress corrosion.
>
> This condition, if not detected and corrected, could lead to loss (i.e. detachment from the aeroplane) of the lower fairing attachment at Rib 10, and/or loss of the aft fixed fairing with the movable fairing, possibly resulting in * * * [damage to the airplane].
>
> For the reasons described above, this [EASA] AD requires repetitive detailed inspections (DI) of the right hand (RH) Part Number (P/N) D54530014201 and left hand (LH) P/N D54530014200 corner fittings of engine pylon aft secondary structures (pre-mod 38067 or pre-Airbus Service Bulletin (SB) A320–54–1019) to detect cracks or deformation in the splicing area with corner fitting between Ribs 11–12 and, depending on findings, replacement of the corner fittings.
>
> This [EASA] AD also recognizes that replacement of the corner fittings with improved parts (as per Airbus SB A320–54–1019) constitutes a terminating action for the repetitive DI required by this [EASA] AD.

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–2014–0589.

Relevant Service Information

Airbus has issued Service Bulletin A320–54–1019, Revision 01, dated April 10, 2008; and Service Bulletin A320–54–1022, Revision 02, dated July 12, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 851 airplanes of U.S. registry.

We also estimate that it would take about 30 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $2,170,050, or $2,550 per product.

In addition, we estimate the optional terminating modification would take about 60 work-hours and require parts costing about $932 per product, for a cost of $6,032 per product.

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

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2014–0589; Directorate Identifier 2014–NM–069–AD.

(a) Comments Due Date

We must receive comments by October 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, except for airplanes on which Airbus Modification 33844, or Modification 33847, as applicable, has been embodied in production.

(1) Airbus Model A318–111 and –112 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of cracks on the forward corner fittings of engine pylon aft secondary structures. We are issuing this AD to detect and correct detachment of the lower fairing attachment and/or loss of the aft fixed fairing with the movable fairing from the airplane in flight, which could result in damage to the airplane.

(f) Compliance

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

(g) Repetitive Inspections

At the latest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do a detailed inspection for cracking of forward corner fittings having part number (P/N) D54530014201 (right-hand (RH)) and P/N D54530014200 (left-hand (LH)) of the pylon aft secondary structures, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–54–1022, Revision 02, dated July 12, 2013, except as provided by paragraph (j) of this AD. Repeat the inspection thereafter at intervals not to exceed 15,000 flight cycles or 22,500 flight hours, whichever occurs first. Accomplishment of the actions required by paragraph (i) of this AD terminates the actions required by this paragraph.

(1) Within 15,000 flight cycles or 22,500 flight hours, whichever occurs first since first flight of the airplane.

(2) Within 5,000 flight cycles or 7,500 flight hours after the effective date of this AD, without exceeding 40,750 flight cycles or 60,750 flight hours, whichever occurs first since first flight of the airplane.

(3) Within 750 flight cycles or 750 flight hours, whichever occurs first after the effective date of this AD.

(h) Related Investigative and Corrective Actions

If any crack is found on the corner fittings of a pylon during any inspection required by paragraph (g) of this AD: Before further flight, do a detailed inspection for cracking of the lower and medium spars, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–54–1022, Revision 02, dated July 12, 2013.

(1) If any damage is found: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) If no damage is found: Within 5,000 flight cycles or 7,500 flight hours, whichever occurs first after the detailed inspection specified in paragraph (h) of this AD, modify the airplane, in accordance with the Accomplishment Instructions of Service Bulletin A320–54–1019, Revision 01, dated April 10, 2008.

(i) Optional Terminating Action

Modification of an airplane by installation of corner fittings having P/N D0041092120000 RH and P/N D0041092120100 LH on both pylons, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–54–1019, Revision 01, dated April 10, 2008, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD.

(j) Parts Installation Exception

Airplanes on which Airbus Modification 38067 (installation of new corner fittings) has been embodied in production, and airplanes already modified in service as described in Airbus Service Bulletin A320–54–1019, are not affected by the requirements of paragraph (g) of this AD, provided that no corner fittings having P/N D54530014201 RH or P/N D54530014200 LH have been installed since first flight of the airplane, or since modification, as applicable.

(k) Parts Installation Prohibition

(1) As of the effective date of this AD, for airplanes on which Airbus Modification 38067 has been embodied in production on both pylons, and for airplanes previously modified in service as described in Airbus Service Bulletin A320–54–1019: Do not install any corner fittings having P/N D54530014201 RH or P/N D54530014200 LH.

(2) After modification as required by paragraph (h) of this AD, or after optional modification as specified in paragraph (i) of this AD, as applicable: Do not install any corner fittings having P/N D54530014201 RH or P/N D54530014200 LH.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–54–1022, dated July 7, 2009; or Airbus Service Bulletin A320–54–1022, Revision 01, dated September 29, 2011; which are not incorporated by reference in this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0064, dated March 14, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0589.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 22, 2014.

Kevin Hull,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20937 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0619; Directorate Identifier 2014–NM–029–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model 4101 airplanes. This proposed AD was prompted by a report of the failure, due to overheat, of a bracket on which the earth post (EP) for the generator and propeller de-ice systems is located. This proposed AD would require an inspection of the affected EPs and attachment structure for damage, an inspection of the earth cables of the generator and propeller de-ice system for signs of overheating and arcing damage, a torque check of the affected EP stiff nuts, an electrical high current bonding check of the bracket, and corrective actions if necessary. We are proposing this AD to detect and correct an overheat failure of the EPs for the generator and propeller de-ice system, and possible degradation of the wing front spar cap and/or web, which could affect the structural integrity of the wing.

DATES: We must receive comments on this proposed AD by October 20, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0619; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0619; Directorate Identifier 2014–NM–029–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0006, dated January 7, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all BAE Systems (Operations) Limited Model 4101 airplanes. The MCAI states:

> An occurrence was reported involving a Jetstream 4100 aeroplane, where a bracket, on which the earth post for the generator and propeller de-ice systems is located, failed due to overheat. Although the earth post and cables were not damaged, the mounting bracket and underlying structure were damaged to the extent that repair of the wing front spar web was necessary. Furthermore, the aft engine cross support rod, which is attached to the same bracket, was found damaged, as a result of excessive current load, and required replacement. The subsequent investigation determined that, due to the damage tolerance of the aft engine cross rod support, the rod does not present an airworthiness issue. However, as a consequence of overheat failure of the earth post, degradation of the wing front spar cap and/or web could affect the structural integrity of the wing.
>
> This condition, if not detected and corrected, could reduce the capacity of the wing to support loads, possibly resulting in wing structure failure and consequent loss of the aeroplane.
>
> To address this potential unsafe condition, BAE Systems (Operations) Ltd issued [Inspection] Service Bulletin (SB) J41–24–043 [Revision 2, dated August 21, 2013] to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time visual inspection of the affected earth posts, an electrical high current bonding check of the bracket and, if discrepancies are detected, accomplishment of applicable corrective action(s).

The required actions include a general visual inspection of the affected EPs and attachment structure for damage; a general visual inspection of the earth cables of the generator and propeller de-ice system for arcing damage and signs of overheating of the cable insulation and terminal tags; a torque check of the EP2 and EP4 stiff nuts; an electrical high current bonding check of the bracket; and corrective actions if necessary. Corrective actions include repair of damaged structure, replacement of damaged cables, cleaning of all applicable surfaces to achieve the necessary resistance value, and correction of the torque load of EP stiff nuts. 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–2014–0619.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin

J41–24–043, Revision 2, dated August 21, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

Although the MCAI and BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, Revision 2, dated August 21, 2013; tells you to submit information to the manufacturer, paragraph (k) of this proposed AD specifies that such submittal is not required. This difference has been coordinated with EASA.

''Contacting the Manufacturer'' Paragraph in This Proposed AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this proposed AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the European Aviation Safety Agency (EASA), or BAE Systems (Operations) Limited's EASA DOA.

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,360, or $340 per product.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited: Docket No. FAA–2014–0619; Directorate Identifier 2014–NM–029–AD.

(a) Comments Due Date

We must receive comments by October 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE Systems (Operations) Limited Model 4101 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by a report of the failure, due to overheat, of a bracket on which the earth post (EP) for the generator and propeller de-ice systems is located. We are issuing this AD to detect and correct an overheat failure of the EPs for the generator and propeller de-ice system and possible degradation of the wing front spar cap and/or web, which could affect the structural integrity of the wing.

(f) Compliance

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

(g) Inspection of the Earth Posts and Attachment Structure and Corrective Action

Within 6 months after the effective date of this AD: Do a general visual inspection on both engines of the structure around EP2 and EP4; the brackets on which the EPs are mounted; the attachment of the nacelle horizontal support for damage, and lateral movement of the EPs; in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, Revision 2, dated August 21, 2013. If any lateral movement of the EP or any other damage is detected, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(h) Inspection of the Earth Cables and Corrective Action

Within 6 months after the effective date of this AD: Do a general visual inspection of the earth cables of the generator and propeller de-ice system for arcing damage and signs that the cable insulation or terminal tags have been overheated, and do all applicable corrective actions; in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, Revision 2, dated August 21, 2013. Do all applicable corrective actions before further flight.

(i) Torque Check of the Earth Post Stiff Nuts

Within 6 months after the effective date of this AD: Do a torque check of the EP2 and EP4 stiff nuts, and adjust the torque load as applicable, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, Revision 2, dated August 21, 2013.

(j) Resistance Measurement of the EP2 and EP4 Earth Bolts

Within 6 months after the effective date of this AD: Measure the resistance of the EP2 and EP4 earth bolts using a high-current millivolts-drop test, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, Revision 2, dated August 21, 2013. Do all applicable corrective actions before further flight.

(k) No Reporting Required

Although BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, Revision 2, dated August 21, 2013, specifies to submit information to the manufacturer, this AD does not require that this information be submitted.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g), (h), (i), and (j) of this AD, if those actions were performed before the effective date of this AD using BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, dated September 27, 2011; or BAE Systems (Operations) Limited Inspection Service Bulletin J41–24–043, Revision 1, dated January 16, 2012; which are not incorporated by reference in this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014–0006, dated January 7, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0619.

(2) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 25, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–20940 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2014–0007; Notice No. 145A; Re: Notice No. 145]

RIN 1513–AC10

Proposed Expansion of the Sta. Rita Hills Viticultural Area; Comment Period Extension

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is extending the comment period for Notice No. 145, Proposed Expansion of the Sta. Rita Hills Viticultural Area, a notice of proposed rulemaking published in the **Federal Register** on August 7, 2014, for an additional 60 days. TTB is taking this action in response to a request from an interested party.

DATES: The comment period for the proposed rule published on August 7, 2014 (79 FR 46204), has been extended. Written comments on Notice No. 145 are now due on or before December 5, 2014.

ADDRESSES: You may send comments on Notice No. 145 to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for Notice No. 145 as posted within Docket No. TTB–2014–0007 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of the petition, selected supporting materials, Notice No. 145, and all public comments associated with this proposal within Docket No. TTB–2014–0007 at *http://www.regulations.gov*. You also may view copies of the petition, the supporting materials, Notice No. 145, and all public comments associated with this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION: In Notice No. 145, a notice of proposed rulemaking published in the **Federal Register** on August 7, 2014 (79 FR 46204), the Alcohol and Tobacco Tax and Trade Bureau (TTB) requested public comment on the proposed expansion of the approximately 33,380-acre ''Sta. Rita Hills'' American viticultural area (27 CFR 9.162) in Santa Barbara County, California. The proposed expansion would increase the AVA by approximately 2,296 acres and would move the northeastern boundary of the AVA east to a north-to-south canyon known as the ''Cañada de los Palos Blancos,'' located west of Buellton. The proposed expansion area contains three commercial vineyards, two of which are currently divided by the existing AVA boundary. The 60-day comment period for Notice No. 145 was originally scheduled to close on October 6, 2014.

On August 18, 2014, TTB received a letter from the chairman of the Sta. Rita Hills Winegrowers Alliance requesting a 90-day extension of the comment period for Notice No. 145 in order to allow more time for industry members to submit comments. The letter states that many local grape growers and winemakers are in the process of bottling previous vintages and preparing for harvest and thus do not have adequate time to prepare and submit comments before the end of the comment period. This request is posted as Comment 20 within Docket No. TTB–2014–0007 at *www.regulations.gov*.

In response to this request, TTB extends the comment period for Notice No. 145 for an additional 60 days. Therefore, comments on Notice No. 145 are now due on or before December 5, 2014. TTB believes that an additional 60 days is an adequate extension of the comment period and is consistent with previous comment period extensions TTB has granted. TTB does not believe a 90-day extension is necessary because neither Notice No. 145 nor the petition and its supporting materials are voluminous or unusually complex, and a 60-day extension will extend the comment period deadline well past the peak of the typical harvest period.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice.

Dated: August 26, 2014.

John J. Manfreda,

Administrator.

[FR Doc. 2014–20929 Filed 9–2–14; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2014–OPE–0124]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations governing the Federal William D. Ford Direct Loan (Federal Direct Loan) Program authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We also announce two public hearings at which interested parties may suggest additional issues that should be considered for action by the negotiating committee. In addition, we announce that the Department will accept written comments regarding additional issues that should be considered for action by the negotiating committee.

DATES: The dates, times, and locations of the public hearings are listed under

the **SUPPLEMENTARY INFORMATION** section of this notice. We must receive written comments suggesting issues that should be considered for action by the negotiating committee on or before November 4, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery*. If you mail or deliver your comments about these proposed regulations, address them to Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006.

Privacy Note: The Department's policy is to make all comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For information about the public hearings, go to *http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *Wendy.Macias@ed.gov*.

For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *Wendy.Macias@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS) toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed Title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select participants for the negotiated rulemaking committee from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select from the nominees individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA.

Regulatory Issues

We intend to convene a committee to develop proposed regulations to allow more student borrowers of Federal Direct Loans to use the ''Pay as You Earn Repayment Plan'', in accordance with the Presidential Memorandum issued on June 9, 2014, (available at *www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments*). Section 1 of the memorandum directs the Secretary to issue, within one year, proposed regulations that expand the President's Pay as You Earn Repayment Plan to more Federal Direct Loan borrowers by allowing additional Federal Direct Loan borrowers to cap their Federal student loan payments at 10 percent of their income. The memorandum directs the Secretary to seek to target this option to those borrowers who would otherwise struggle to repay their loans, and to issue final regulations in a timely fashion after considering all public comments, as appropriate, with the goal of making the repayment option available to borrowers by December 31, 2015.

After a complete review of the public comments presented at the public hearings and in the written submissions, we will publish a document (or documents) in the **Federal Register** announcing the specific subject areas for which we intend to establish a negotiated rulemaking committee, and a request for nominations for individual negotiators for the committee who represent the communities of interest that would be significantly affected by the proposed regulations.

Public Hearings

We will hold two public hearings for interested parties to discuss the rulemaking agenda. The public hearings will be held:

- October 23, 2014, from 9:00 a.m. to 4:00 p.m. local time, at the U.S. Department of Education, 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006.
- November 4, 2014, from 1 p.m. to 4 p.m. local time, at the Marriott Anaheim, 700 West Convention Way, Grand Ballroom E, Anaheim, CA 92802.

Further information on the public hearing sites is available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html*.

Individuals who would like to present comments at the public hearings must register by sending an email to *negreghearing@ed.gov*. The email should include the name of the presenter along with the public hearing at which the individual would like to speak, and a general timeframe during which the individual would like to speak (for example, a presenter could indicate morning or afternoon, or before 11:00 a.m. or after 3:00 p.m.). We will attempt to accommodate each speaker's preference, but, if we are unable to do so, we will make the determination on a first-come first-served basis (based on the time and date the email was received). It is likely that each participant will be limited to five minutes. The Department will notify registrants of the location and time slot reserved for them. An individual may make only one presentation at the public hearings. If we receive more registrations than we are able to accommodate, the Department reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments, and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. We will accept walk-in registrations on the day of the hearing for any remaining time slots on a first-come first-served basis, beginning at 8:30 a.m. at the Washington, DC hearing, and at 12:30 p.m. at the Anaheim, CA hearing.

Registration is not required to observe the public hearings.

Speakers may also submit written comments at the public hearings. In addition, the Department will accept written comments through November 4, 2014. (See the **ADDRESSES** sections of this notice for submission information.)

Schedule for Negotiations

We anticipate that any committee established after the public hearings

will begin negotiations in February 2015, with the committee meeting for up to three sessions of approximately three days each at roughly monthly intervals. The committee will meet in the Washington, DC area. The dates and locations of these meetings will be published in a subsequent document in the **Federal Register**, and will be posted on the Department's Web site at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html*.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *Wendy.Macias@ed.gov*.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Dated: August 28, 2014.

Lynn B. Mahaffie,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–20977 Filed 9–2–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2012–0260; A–1–FRL–9915–70–Region 1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Revised State Plan for Large and Small Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Clean Air Act section 111(d)/129 State Plan revisions for Large and Small Municipal Waste Combustors (MWC) submitted by the New Hampshire Department of Environmental Services (DES) on January 29, 2009 with amendments submitted on February 13, 2009. The revised Plan is in response to amended emission guidelines (EGs) and new source performance standards (NSPS) for Large MWCs promulgated on May 10, 2006 and the strengthening of emission limits on Small MWCs as enacted by the New Hampshire General Court in 2005. New Hampshire DES's State Plan is for implementing and enforcing provisions at least as protective as the EGs applicable to existing Large and Small MWC units.

DATES: Written comments must be received on or before October 3, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0206 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. Email: *mcdonnell.ida@epa.gov*.
3. Fax: (617) 918–0653.
4. Mail: ''Docket Identification Number EPA–R01–OAR–2012–0206,'' Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. Hand Delivery or Courier. Deliver your comments to: Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxic, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA, 02109–0287. The telephone number is (617) 918–1287. Mr. Bird can also be reached via electronic mail at *bird.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's State Plan revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if 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, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: July, 11, 2014.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2014–20800 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2013–0624; FRL 9915–98–Region 6]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Texas has applied to the Environmental Protection Agency (EPA) for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to the State of Texas. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is

authorizing the changes by direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless we get written comments which oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by October 3, 2014.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Texas during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533; or Texas Commission on Environmental Quality, (TCEQ) 12100 Park S. Circle, and Austin, Texas 78753–3087, (512) 239–6079. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: August 5, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014–20788 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 130718637–3637–01]

RIN 0648–XC775

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List Seven Indo-Pacific Species of Pomacentrid Reef Fish as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding, request for information.

SUMMARY: We (NMFS) announce a 90-day finding on seven Indo-Pacific species included in a petition to list eight species of pomacentrid reef fish as threatened or endangered under the Endangered Species Act (ESA). These are the orange clownfish (*Amphiprion percula*) and six other damselfishes: The Hawaiian dascyllus (*Dascyllus albisella*), blue-eyed damselfish (*Plectroglyphidodon johnstonianus*), black-axil chromis (*Chromis atripectoralis*), blue-green damselfish (*Chromis viridis*), reticulated damselfish (*Dascyllus reticulatus*), and blackbar devil or Dick's damselfish (*Plectroglyphidodon dickii*). Another of our regional offices is leading the response to the petition to list the yellowtail damselfish (*Microspathodon chrysurus*) and a separate 90-day finding will be issued later for this species. We find that the petition presents substantial information indicating that the petitioned action may be warranted for the orange clownfish (*Amphiprion percula*). We will conduct a status review for this species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to *Amphiprion percula* from any interested party. We find that the petition fails to present substantial scientific or commercial information indicating that the petitioned action may be warranted for the remaining six petitioned Indo-Pacific species: The Hawaiian dascyllus (*Dascyllus albisella*), reticulated damselfish (*Dascyllus reticulatus*), blue-eyed damselfish (*Plectroglyphidodon johnstonianus*), black-axil chromis (*Chromis atripectoralis*), blue-green damselfish (*Chromis viridis*), and blackbar devil or Dick's damselfish (*Plectroglyphidodon dickii*).

DATES: Information and comments on the subject action must be received by November 3, 2014.

ADDRESSES: You may submit comments, information, or data on this document, identified by the code NOAA–NMFS–2014–0072, by any of the following methods:

- Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0072,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Regulatory Branch Chief, Protected Resources Division, Pacific Islands Regional Office, NMFS Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

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

Copies of the petition and references are available upon request from the Regulatory Branch Chief, Protected Resources Division, Pacific Islands Regional Office, NMFS Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, or online at: *http://www.fpir.noaa.gov/PRD/prd_esa_section_4.html.*

FOR FURTHER INFORMATION CONTACT: Jean Higgins, NMFS Pacific Islands Regional Office, 808–725–5151.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2012, we received a petition from the Center for Biological Diversity to list eight species of pomacentrid reef fish as threatened or endangered under the ESA and to

designate critical habitat for these species concurrent with the listing. The species are the orange clownfish (*Amphiprion percula*) and seven other damselfishes: The yellowtail damselfish (*Microspathodon chrysurus*), Hawaiian dascyllus (*Dascyllus albisella*), blue-eyed damselfish (*Plectroglyphidodon johnstonianus*), black-axil chromis (*Chromis atripectoralis*), blue-green damselfish (*Chromis viridis*), reticulated damselfish (*Dascyllus reticulatus*), and blackbar devil or Dick's damselfish (*Plectroglyphidodon dickii*). Copies of this petition are available from us online (*http://www.nmfs.noaa.gov/pr/species/petitions/pomacentrid_reef_fish_petition_2012.pdf*) or by mail (see **ADDRESSES,** above). Given the geographic range of these species, we divided our initial response to the petition between our Southeast Regional Office (SERO) and Pacific Islands Regional Office (PIRO). PIRO led the response for the seven Indo-Pacific species reported herein. SERO is leading the response to the petition to list the yellowtail damselfish (*Microspathodon chrysurus*) and a separate 90-day finding will be issued for this species.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned, which includes conducting a comprehensive review of the best available scientific and commercial information. Within 12 months of receiving the petition, we must conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a significantly more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a ''may be warranted'' finding at the 90-day stage does not prejudge the outcome of a status review.

Under the ESA, a listing determination may address a ''species,'' which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS and U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (''DPS Policy''; 61 FR 4722; February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively; 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, the determination of whether a species is threatened or endangered shall be based on any one or a combination of the following five section 4(a)(1) factors: The present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, we must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination whether a petitioned action ''may be'' warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is either threatened or endangered to support a positive 90-day finding.

At the 90-day stage, we evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. Conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (e.g., population abundance and trends, productivity, spatial structure,

age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by non-governmental organizations, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. Thus, when a petition cites such classifications, we will evaluate the source of information upon which the classification is based in light of the species extinction risk and impacts or threats discussed above.

Species Descriptions

Orange Clownfish (Amphiprion percula)

The orange clownfish is also referred to as an anemone fish because of its symbiotic relationship with host sea anemones. Individuals are orange with three white bands, with the middle band bulging forward toward the head centrally. Black stripes separate the orange and white coloration on the body. They can reach a maximum length of 11 cm (Florida Museum of Natural History, 2011). *Amphiprion percula* ranges from Queensland, Australia to parts of Melanesia, including the northern Great Barrier Reef (GBR), northern New Guinea, New Britain, Vanuatu, and the Solomon Islands (Fishbase.org). This range is mostly restricted to areas inside the Coral Triangle area of the Pacific (with the exception of the northern GBR). It does not occur anywhere within U.S. jurisdiction. It is a non-migratory species that inhabits lagoon and seaward reefs at depths of one to 15 m (Florida Museum of Natural History, 2011). The petition did not present any information on the global population size or trends of *A. percula* and we do not have any information on *A. percula's* global population size in our files.

Amphiprion percula individuals live in symbiotic association with three species of anemone, *Heteractis crispa, H. magnifica,* and *Stichodactyla gigantea* (Ollerton *et al.,* 2007). This species forages on algae and plankton as well as bits of food leftover on its host anemone tentacles (Florida Museum of Natural History, 2011). Reproduction occurs throughout the year when the male prepares a nest site. The petition states that females lay anywhere from 100 to over 1,000 eggs depending on body size and age citing Buston and Elith (2011), however the authors actually report an average of 324 eggs per clutch (ranged from 1 to 878) in their results. Incubation takes six to seven days, after which larvae hatch and enter an eight to twelve day pelagic larval phase (Buston *et al.,* 2007). The expected life span for a female clownfish is 30 years (Buston and Garcia, 2007).

Black-axil Chromis (Chromis atripectoralis)

The Black-axil chromis is a damselfish with a broad geographic range occurring throughout most of the Indo-Pacific; they range from the Ryuku Islands to the Great Barrier Reef, Lord Howe Island, east through the islands of Oceania except the Hawaiian Islands, Marquesas, and Pitcairn Islands, and west in the Indian Ocean to the Maldives and Seychelles (Randall, 2005). Within U.S. Pacific possessions this species occurs in American Samoa and the Marianas archipelago (Allen, 1991). *Chromis atripectoralis* and *C. viridis* are difficult to distinguish in the field and have overlapping ranges. They have often been treated as a species complex by researchers.

The petition did not present any information regarding the global population size or trends of *C. atripectoralis.* The NMFS Coral Reef Ecosystem Division (CRED) conducts surveys on coral reefs throughout the U.S. Pacific territories including the Main and Northwestern Hawaiian Islands, Guam, the Northern Mariana Islands, American Samoa, and the Pacific Remote Island Areas (PRIAs). Data from surveys conducted roughly biennially since 2009 provides some insight into this species' abundance in the outer edges of this species range. Since this is relatively recent, we consider all of these surveys to represent current estimates of density and not to contain any trend information. For the *C. atripectoralis*/*C. viridis* complex, CRED provided us an average population estimate from within U.S. Pacific possessions of approximately 770,000 based on calculations of density and habitat area at survey sites; the estimated population range was identified as 0 to 1,500,000 (one standard error on either side of the mean). Although these abundance estimates have large error bars associated with them and must be interpreted with caution, they represent the best available information regarding the species' current abundance. These survey areas only represent a small portion of the broad geographic ranges for these two species. Density is likely higher in other parts of their ranges because CRED survey sites are located at the edges of their geographic ranges, where we would expect population densities to be lower in comparison to the core range. However, even if we assume the densities measured by CRED and applied to the total habitat area within survey sites apply throughout the entire ranges of these species which includes hundreds of thousands of square kilometers of coral reef habitat area, the current global population size is likely in the hundreds of millions.

Chromis atripectoralis individuals are blue-green in color shading to white ventrally and can grow up to 11 cm in length. While very similar in appearance to *C. viridis, C. atripectoralis* is distinguished by the black base (axil) of the pectoral fin and more branched pectoral rays (Froukh and Kochzius, 2008). This species is commonly observed associated with branching corals, primarily *Acropora* and *Pocillopora,* in a depth range of two to 15 m. Adults are typically seen in foraging aggregations above corals where they feed on zooplankton in the water column (Randall, 2005). *Chromis* species exhibit a pelagic larval phase that ranges from 17 to 47 days (Allen, 1991). The petition provided no additional biological information for this species, nor do we have any in our files.

Blue-green Damselfish (Chromis viridis)

The blue-green damselfish has a broad geographic range occurring throughout most of the Indo-Pacific; they range from the Red Sea and east coast of Africa to the Line Islands and Tuamotu

Archipelago, Ryuku Islands to the Great Barrier Reef and New Caledonia (Randall, 2005). Within U.S. Pacific possessions, *C. viridis* occurs in American Samoa, the Marianas archipelago (Allen, 1991), and the PRIAs (NMFS' Pacific Islands Fisheries Science Center (PIFSC) unpublished data).

The petition did not present any information regarding the global population size or trends of *C. viridis.* As noted above, we treated *C. atripectoralis* and *C. viridis* as a species complex and estimate a current global population size in the hundreds of millions, based on CRED data from survey areas within U.S. Pacific possessions.

Individuals are blue-green in color shading to white ventrally with a blue line from the front of the snout to the eye and can reach 10 cm in length (Randall, 2005). *Chromis viridis* inhabits shallow protected inshore and lagoon reefs and is commonly observed associated with branching corals, primarily *Acropora* and *Pocillopora,* in a depth range of one to 12 meters (Allen, 1991). This species is planktivorous, feeding mainly on copepods and crustacean larvae in large aggregations above branching corals (Randall, 2005). Spawning involves a large number of eggs that hatch in two to three days. The species is oviparous with distinct pairing during breeding (Fishbase.org). *Chromis* species exhibit a pelagic larval phase that ranges from 17 to 47 days (Allen, 1991). The petition provided no additional biological information for this species, nor do we have any in our files.

Hawaiian Dascyllus (Dascyllus albisella)

The Hawaiian dascyllus, also known as the domino damselfish, is endemic to the United States, occurring only in Hawaii and Johnston Atoll (Danilowicz, 1995; Asoh and Yoshikawa, 2002).

The petition provided no estimate of global population size or trends for this species. The entire range of *D. albisella* is within CRED survey areas so we have information in our files regarding current density. CRED then calculated for us estimates of abundance based on the density data and habitat area at survey sites as described above. These abundance estimates have large error bars associated with them and must be interpreted with caution, however, they represent the best available information regarding the species' current abundance. The current global population estimate provided to us by CRED for *D. albisella* ranges from 5,866,000 to 17,121,000 (one standard error on either side of the mean) with a mean estimate of 11,493,000. However, because *D. albisella* is common at depths down to 80 meters, far deeper than the 30 meter maximum depth of CRED surveys and the estimated 20 meter depth of coral reef area figures, the entire population may be even larger.

Individuals are small and deep-bodied, reaching a maximum length of 13 cm. Adults are pale or dark with white spots fading with age, while juveniles are black with a white spot on each side and a turquoise spot on the head (Stevenson, 1963). *Dascyllus albisella* is commonly observed associated with branching corals (Allen, 1991; Randall, 1985) in a depth range of one to 84 m. This species is planktivorous, feeding in schools above the reef on the larvae of mysid shrimp, shrimp and crabs, copepods, pelagic tunicates, and other zooplankton (Randall, 1985). Spawning occurs cyclically throughout the year, though spawning activity peaks from June to September or October (Asoh and Yoshikawa, 2002). Cycles last two to three days and subsequent cycles occur every five to seven days (Asoh, 2003). Increasing temperature appears to cue the initiation of spawning and females spawn repeatedly over a season with various partners (Asoh and Yoshikawa, 2002). Females lay an average of 25,000 eggs per clutch (Danilowicz, 1995). The species has a pelagic larval phase estimated to last for 25 to 29 days (Booth, 1992). Life expectancy is estimated at up to 11 years. The petition provided no other biological information for this species, nor do we have any in our files.

Reticulated Damselfish (Dascyllus reticulatus)

Dascyllus reticulatus is a damselfish with a broad geographic range occurring throughout most of the Indo-Pacific; it ranges from southern Japan to the Great Barrier Reef, Lord Howe Island, New Caledonia, and Micronesia, east to the Tuamotu Archipelago and Pitcairn Islands, and west to western Australia, Cocos-Keeling Islands, and the Andaman Sea (Randall, 2005). Within U.S. Pacific possessions, they occur in American Samoa, the Marianas archipelago (Allen, 1991), and the PRIAs (PIFSC, unpublished data).

The petition did not present any information regarding the global population size or trends of *D. reticulatus.* For *D. reticulatus,* CRED provided us a population estimate from within U.S. Pacific possessions ranging from 1.5 million to 7.7 million (one standard error on either side of the mean) with a mean of 4.6 million. Again, although these abundance estimates have large error bars associated with them and must be interpreted with caution, they represent the best available information regarding the species' current abundance. These survey areas only represent a small portion of the broad geographic range for *D. reticulatus.* Density is likely higher in other parts of its range because CRED survey sites are located at the edges of its geographic range. However, even if we assume the densities measured by CRED and applied to the total habitat area within survey sites applies throughout the entire range of this species which includes hundreds of thousands of square kilometers of coral reef habitat, the current global population size is likely in the billions.

Individuals are pale blue-grey, the edges of the scales are narrowly black with a blackish bar anteriorly on the body continuing as a broad outer border on the spinous portion of the dorsal fin. They can attain 8.5 cm in length (Randall, 2005). *Dascyllus reticulatus* is commonly observed associated with branching corals, primarily *Acropora* and *Pocillopora,* in a depth range of one to 50 m (Allen, 1991; Randall, 2005). This species is planktivorous and feeds on zooplankton a short distance above the reef (Sweatman, 1983; Randall, 2005). *Dascyllus* species exhibit a pelagic larval phase that ranges from 17 to 47 days (Allen, 1991). The petition did not provide any other biological information for this species, nor do we have any in our files.

Blackbar Devil or Dick's Damselfish (Plectroglyphidodon dickii)

Plectroglyphidodon dickii is a damselfish with a broad geographic range occurring throughout most of the Indo-Pacific; it ranges from the Red Sea and east coast of Africa to the Islands of French Polynesia, and from the Ryuku Islands to New South Wales and Lord Howe Island in Australia (Randall, 2005). Within U.S. Pacific possessions, it occurs in American Samoa (Allen, 1991), the Marianas archipelago, and the PRIAs (PIFSC, unpublished data).

The petition did not present any information regarding the global population size or trends of *P. dickii.* For *P. dickii,* CRED provided us a population estimate from within U.S. Pacific possessions ranging from 5.3 million to 9 million (one standard error on either side of the mean), with a mean of 7.2 million. Again, although these abundance estimates have large error bars associated with them and must be interpreted with caution, they represent the best available information regarding the species' current abundance. These

survey areas only represent a small portion of the broad geographic range for *P. dickii.* Density is likely higher in other parts of its range because CRED survey sites are located at the edges of its geographic range. However, even if we assume the density measured by CRED and applied to the total habitat area within survey sites applies throughout the entire range of this species which includes hundreds of thousands of square kilometers of coral reef habitat, the current global population size is likely in the billions.

Individuals are light brown with a sharp black band toward the back end with a white back end and tail; they reach a maximum length of 8.5 cm (Randall, 2005). They are commonly observed associated with branching corals, primarily *Acropora* and *Pocillopora* (Allen, 1991; Randall, 2005). The petition states this species has a depth range of one to 12 meters, however information in our files from survey data collected by CRED indicates this species has been recorded in the 18 to 30 meter depth range in the Marianas, PRIAs, and American Samoa. *Plectroglyphidodon dickii* is a territorial grazer that feeds on filamentous algae and small benthic invertebrates (Walsh *et al.,* 2012). Cole *et al.* (2008) report this species to be a facultative corallivore (i.e., coral may make up some portion of its diet but is not an obligate diet requirement). Additional references provided by the petitioner indicate this species is primarily herbivorous, feeding on diatoms, blue-green algae, other types of filamentous red algae, small benthic invertebrates, and occasionally small fishes (Jones *et al.,* 2006; Walsh *et al.,* 2012; Fishbase.org), and has been observed actively killing coral polyps in order to make more room for algae growth within its territory (Jones *et al.,* 2006). The petition provided no other biological information for this species, nor do we have any in our files.

Blue-eyed Damselfish (Plectroglyphidodon johnstonianus)

The blue-eyed damselfish has a broad geographic range occurring throughout most of the Indo-Pacific; it ranges from the east coast of Africa to the Hawaiian Islands, French Polynesia, and Pitcairn Islands, and from the Ryuku and Ogasawara Islands to the Great Barrier Reef, Lord Howe, and Norfolk Island (Randall, 2005). Within U.S. Pacific possessions, it occurs in Hawaii, American Samoa, the Marianas archipelago (Allen, 1991) and the PRIAs (PIFSC, unpublished data).

The petition did not present any information regarding the global population size or trends of *P. johnstonianus.* For *P. johnstonianus,* CRED provided us a current population estimate from within U.S. Pacific possessions ranging from 9.6 million to 20.3 million (one standard error on either side of the mean), with a mean of 15 million. Again, although these abundance estimates have large error bars associated with them and must be interpreted with caution, they represent the best available information regarding the species' current abundance. These survey areas only represent a small portion of the broad geographic range for *P. johnstonianus.* Density is likely higher in other parts of its range because CRED survey sites are located at the edges of its geographic range. However, even if we assume the densities measured by CRED and applied to the total habitat area within the survey sites apply throughout the entire range of this species which includes hundreds of thousands of square kilometers of coral reef habitat, the current global population size is likely well into the billions.

Individuals have a pale yellowish grey body with a very broad black posterior bar, a head that is gray dorsally shading to yellowish grey ventrally, a violet-blue line on the sides of the snout, and lavender scales rimming the eyes (Randall, 2005). This species inhabits passes and outer reefs and is often observed associated with *Acropora* or *Pocillopora* corals (Allen, 1991; Randall, 2005). The petition provides a depth range for this species of two to 18 meters, however CRED data indicate this species has also been recorded in the 18 to 30 meter depth range in all U.S. territories in which it occurs. *Plectroglyphidodon johnstonianus* may be an obligate corallivore feeding primarily on live coral polyps from *Acropora, Monitpora, Porites,* and *Pocillopora* species (Cole *et al.,* 2008), although their diet is also reported to include benthic algae (Fishbase.org).

Analysis of the Petition

For each of the seven petitioned species, we evaluated whether the petition provides the information and documentation required in 50 CFR 424.14(b)(2). The petition clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved. The petition also contains a narrative justification for the recommended measures and provides limited information on the species' geographic distribution, habitat use, and threats. The petition did not include any information on past or present population numbers and it states that abundance and population trends are unknown for all petitioned species. The petition does not identify any risk classifications by other organizations for any petitioned species. The petition includes supporting references. The petition states that primary threats to the petitioned species include loss of coral reef habitat due to climate change, overharvest for the marine aquarium fish trade, inadequate regulatory mechanisms, and direct harm to essential biological functions from ocean acidification and ocean warming.

The petition begins with general biological and ecological information about pomacentrids, and then provides sections for each petitioned species that contain a brief discussion of unique material for each species, including a species description, information on distribution, habitat, natural history, and threats, each with a range map. These sections are followed by sections providing generalized discussion of four of the five ESA listing factors that the petition states are affecting the extinction risk of the petitioned species, some of which contain limited species-specific information for one or more of the petitioned species.

In the following sections, we use the information presented in the petition and in our files to determine whether the petitioned action may be warranted. We summarize our analysis and conclusions regarding the information presented by the petitioner and in our files on the specific ESA section 4(a)(1) factors affecting each of the species' risk of global extinction below.

General Threat Information

According to the petition, four of the five causal threat factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of each of the seven Indo-Pacific petitioned species: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

In this section we assess the generalized information that was provided regarding these four threats; the species-specific threat information will be addressed below in the individual species sections.

Climate Change Effects on Coral Habitat

Under Listing Factor A, the petition states the petitioned species are ''threatened by the loss and degradation

of coral reef habitat due to temperature-induced mass bleaching events and ocean acidification. . . .'' The petition states broadly that ''the petitioned pomacentrid reef fish are habitat specialists that directly depend on live corals for survival, including shelter, reproduction, recruitment, and food.'' The petition explains this by stating ''[t]hese damselfish all specialize on sensitive branching corals such as *Acropora* and *Pocillopora* which are particularly prone to bleaching. . . .''

The petition discusses at length climate change impacts to corals and coral reefs and future predictions for worsening impacts to corals at a global scale. In general terms, ''climate'' refers to average weather conditions, as well as associated variability, over a long period of time (e.g., decades, centuries, or thousands of years). Thus we define ''climate change'' as a non-random change in the state of the climate (whether due to natural variability, human activity, or both) that can be identified by changes in the mean or variability of its properties and that persists for an extended period, typically decades or longer. In the context of coral reefs, the primary climate variables described relevant to climate change are ocean temperatures and acidity. Many of the climate-change references provided by the petitioner offer global predictions on future rises in sea surface temperature (Donner *et al.,* 2005; Donner, 2009), ocean acidity (Hoegh-Guldberg *et al.,* 2007), coral bleaching (Hoegh-Guldberg, 1999; Donner *et al.,* 2005; 2007; Burke *et al.,* 2011) or coral reef decline in general (Hoegh-Guldberg, 1999; Veron *et al.,* 2009) based on regional or global averages.

We have additional information regarding climate change impacts and predictions for coral reefs readily available in our files, much of which is more recent than the literature presented in the petition. This information indicates a highly nuanced and variable pattern of exposure, susceptibility, resilience, and recovery of coral reefs to climate change over regionally and locally different spatial and temporal scales, and reflects the high level of uncertainty associated with future predictions. The literature underscores the multitude of factors contributing to coral response to thermal stress, including taxa, geographic location, biomass, previous exposure, frequency, intensity, and duration of thermal stress events, gene expression, and symbiotic relationships (Pandolfi *et al.,* 2011; Putman *et al.,* 2011; Buddemeier *et al.,* 2012; Sridhar *et al.,* 2012; Teneva *et al.,* 2012; van Hooidonk and Huber, 2012).

Vulnerability of a coral species to a threat is a function of susceptibility and exposure, considered at the appropriate spatial and temporal scales. Susceptibility is primarily a function of biological processes and characteristics, and can vary greatly between and within coral taxa (i.e., family, genus, or species). Susceptibility depends on direct effects of the threat on the species, and it also depends on the cumulative (i.e., additive) and interactive (i.e., synergistic or antagonistic) effects of multiple threats acting simultaneously on the species. For example, ocean warming affects coral colonies through the direct effect of bleaching, together with the interactive effect of bleaching and disease, because there is evidence that bleaching increases disease susceptibility in some species. Vulnerability of a coral species to a threat also depends on the proportion of colonies that are exposed to the threat. Exposure is primarily a function of location and physical processes and characteristics that limit or moderate the impact of the threat across the range of the species. Information in our files suggests that not all coral species are highly vulnerable to the threats associated with global climate change (Brainard *et al.,* 2011; van Woesik *et al.,* 2011; Darling *et al.,* 2012; van Woesik *et al.,* 2012; Foden *et al.,* 2013). Even species that may be moderately vulnerable to ocean warming and acidification can have low extinction risk because demographic characteristics such as high abundance and/or a broad spatial (e.g., depth) and geographic distribution can moderate exposure to the threat which is predicted to occur in a spatially non-uniform pattern.

The petition's general discussion of climate change acknowledges that some corals are resistant to bleaching, but continues to attempt to generalize bleaching as an extinction threat to all corals. Likewise the petition implies that ocean acidification is a threat to all coral species with which the petitioned species may associate. Data in our files as summarized by Brainard *et al.* (2011) show that adaptation and acclimatization to increased ocean temperatures are possible; that there is intra-genus variation in susceptibility to bleaching, ocean acidification, and sedimentation; that at least some coral species have already expanded their range in response to climate change (thus decreasing their extinction risk); and that not all coral species are seriously affected by ocean acidification. Thus at the broad level of coral reefs, the information in the petition and in our files does not allow us to conclude that coral reefs generally are at such risk from climate change effects to threaten the viability of the petitioned species.

In addition to predicted vulnerabilities based on biological and demographic characteristics, we consider empirical information on overall trends of live coral cover within the range of the petitioned species. No recent, region-wide reports of current overall live coral cover are available for the Indo-Pacific as a whole. However, recent reports from parts of the region have found current live coral cover to be stable or increasing in many areas, while others have experienced some decreases. Monitoring data collected annually from 47 sites on the GBR from 1995 to 2009 averaged 29 percent live coral cover (Osborne *et al.,* 2011). More importantly, this study found no evidence of consistent, system-wide decline in coral cover since 1995. Instead, fluctuations in coral cover at sub-regional scales (10–100 km), driven mostly by changes in fast-growing *Acropora* species, occurred as a result of localized disturbance events and subsequent recovery (Osborne *et al.,* 2011). However, another recent study, based on 2,258 surveys of 214 GBR reefs over 1985–2012, showed declines in live coral cover from 28 percent to 14 percent, a loss of half of the initial coral cover (the majority of which occurred at the end of the study period and after the Osborne *et al.* (2011) study had concluded) (Sweatman *et al.,* 2011). A study of 317 sites in the Philippines from 1981 to 2010 showed live coral cover increased from 29 percent in 1981 to 37 percent in 2010 (Magdaong *et al.,* 2013). A study of 366 sites from 1977 to 2005 in the Indian Ocean documented significant variation in coral cover trends over time and space, but overall following the mass 1998 bleaching event there was a large decline of 44 percent of the original live coral cover followed by partial recovery to 72.6 percent of pre-disturbance levels (Ateweberhan *et al.,* 2011). A study in Western Australia from 2005 to 2009, following a 1998 and 2003 bleaching events which left the area with relatively low coral cover, documented recovery to 10 percent total live hard coral cover and 5 percent soft coral cover in 2005 and 30 percent hard coral cover and 22 percent soft coral cover in 2009 (Ceccarelli *et al.,* 2011). Further, a study in the Andaman Islands of India following a 2010 bleaching where corals were bleached from 74–77 percent documented recovery of live

coral cover from 13 to 21 percent in two years (Marimuthu *et al.,* 2012). These recent studies illustrate the dynamic nature of live coral cover. It is likely that the overall region-wide live coral cover in the Indo-Pacific is declining over the decade to century scales (Birkeland 2004; Fenner 2012; Pandolfi et al. 2003; Sale and Szmant 2012), but with fluctuations on shorter time scales.

In conclusion, information in our files regarding live coral cover confirms that there has been a long-term overall decline in live coral cover in the Indo-Pacific (Birkeland 2004; Fenner 2012; Pandolfi et al. 2003; Sale and Szmant 2012), and that those declines are likely ongoing and likely to continue in the future due to a multitude of global and local threats at all spatial scales. However, as the above information illustrates, live coral cover trends are highly variable both spatially and temporally, producing patterns on small scales that may not be extrapolated beyond the localized area. Live coral cover trends are complex, dynamic, and highly variable across space and time. Thus their interpretation requires the appropriate spatiotemporal context, and an understanding of the various physical, biological, and ecological processes at work within coral communities and coral reef ecosystems. The ranges of the petitioned reef fish are expansive and encompass much of the variability in environmental conditions discussed above, indicating that while overall habitat may have declined, some portions of their range may have experienced declines in coral cover while some have experienced stability or increasing coral cover over the last few decades.

The petitioner goes on to discuss more specific coral habitat and describes the preferred habitat for most of the petitioned species, excluding *Amphiprion,* as ''branching corals, mostly *Acropora* and *Pocillopora.''* The petition did not provide information on the extent to which *Acropora* and *Pocillopora* corals are no longer available as preferred habitat within the ranges of the petitioned species, or predictions for future distribution or availability of these coral genera as a result of climate change impacts. Information in our files (and provided in Bonin, 2012) indicates that *Acropora* and *Pocillopora* species may respond negatively to a bleaching event; however, there is high variability in susceptibility to bleaching and acidification among *them,* which is demonstrated in observed responses to bleaching events. For example, Bonin (2012) shows the 16 species of *Acropora* he studied being affected to varying degrees by bleaching. A majority of those species exhibited moderate bleaching susceptibility (less than 50 percent of colonies severely bleached or dead). The incidence of severe bleaching (more than 50 percent of colony with strong pigmentation loss) among species ranged from zero to 62 percent, with an average of 25 percent among the 16 species. The incidence of unbleached colonies (healthy colonies with no visible loss of color) ranged from zero to 46 percent among species with an average of 20 percent. Mortality among the 16 species evaluated ranged from zero to 40 percent, with an average of 5.2 percent mortality. His surveys were conducted in two to six meters of water in Kimbe Bay, Papua New Guinea. In such a narrow and shallow depth range within the coral triangle area, we'd expect to see severe results from a bleaching event, yet this site still shows high variability among the 16 *Acropora* species evaluated.

In another study from our files, Foden *et al.* (2013) developed a framework for identifying the species most vulnerable to extinction from a range of climate change induced stresses. Their evaluations included 797 species of reef building corals, including 165 species of *Acropora* and 17 species of *Pocillopora,* and incorporated species' physiological, ecological, and evolutionary characteristics, in conjunction with their predicted climate change exposure. The results indicate that just eight of those 165 *Acropora* species, and four of the 17 *Pocillopora* species, have high overall vulnerability to climate change. The remaining 157 *Acropora* and 13 *Pocillopora* have low overall vulnerability, indicating they are the least vulnerable to extinction due to climate change stresses within this group. In fact, acroporids (which includes the Genus *Acropora*) were highlighted by the authors as one of three coral families that have a mean climate change vulnerability score significantly lower than the mean for all corals. Of the eight species of *Acropora* that were rated as highly vulnerable to climate change, several have plating or short bushy morphologies and all of them occur in very restricted ranges in either the western Indian Ocean or in Japan. Thus, these highly vulnerable species are unlikely to represent habitat of significance to the petitioned reef fish that occur in these waters because the reef fish have expansive ranges (beyond the Indian Ocean and/or Japan). Similarly, the four *Pocillopora* species rated as highly vulnerable are also unlikely to represent significant habitat for the petitioned species. Specifically, two of them are limited to small ranges in the East Pacific, outside the ranges of the petitioned reef fish species, one occurs in deep water, and the other has a restricted range limited to waters around Madagascar, which only represents a small fraction of the expansive ranges of the petitioned chromis and plectroglyphidodon species. Other information in our files also indicates that *Acropora* corals are some of the fastest to re-grow and recover from disturbance (Adjeroud *et al.,* 2009; Diaz-Pulido *et al.,* 2009; Osborne *et al.,* 2011).

The petition presented site specific studies from bleaching events in Okinawa, Japan (Loya *et al.,* 2001) and the Great Barrier Reef (Marshall and Baird, 2000) indicating branching *Acropora* and *Pocillopora* corals were among the most susceptible to bleaching. Marshall and Baird (2000) reported a mixed response to bleaching with fewer than 10 percent of colonies of *Pocillopora damicornis* unbleached and the majority of *Pocillopora* species were either severely bleached or dead six weeks after a large scale bleaching event in 1998. They also observed a mixed response to bleaching among *Acropora* corals. For example, 25 percent of caespitose (tufted) and corymbose (bushy) species of *Acropora* were severely bleached or dead, yet over 60 percent of the colonies of these species remained unbleached. They found significantly different bleaching responses among sites, depths, and taxa. Spatial variation in bleaching impacts may be driven by variation between sites in environmental conditions, including differences in temperature at a particular site. However, Marshall and Baird (2000) noted that the local-scale variation in this study was likely driven by ecological factors such as assemblage composition or biological factors such as acclimatization, because bleaching was less severe at sites with consistently higher temperatures. Site specific studies like these present a localized picture, the results of which can be extremely variable depending on the environmental and ecological variables associated with the study site, and have limited usefulness in predicting range-wide impacts to habitat for the petitioned species.

Foden *et al.* (2013) provide an overall range-wide perspective that incorporates species' physiological, ecological and evolutionary characteristics, in conjunction with their predicted climate change exposure to identify those coral species most at risk from climate change. We find Foden *et al.'s* (2013) approach to be informative for considering the potential

for range-wide impacts to *Acropora* and *Pocillopora* habitat that may threaten the continued existence of the petitioned reef fish species that commonly associate with these coral species because it provides information on a wide range of species within those genera and the results are not specific or limited to any particular geographic area. Data in our files demonstrates that most *Acropora* and *Pocillopora* corals have low vulnerability to bleaching due to ocean warming. Thus, even though all *Acropora* and *Pocillopora* species are likely to be negatively affected by coral bleaching to some degree, or in some locations depending on environmental variables, the information in the petition and in our files suggests the effects overall are likely to be low for most of those species and we cannot reasonably infer that there may be a risk to the petitioned species because of high mortality of these corals.

Based on the information in the petition and our files, we cannot infer that the general information on coral bleaching and acidification effects on pomacentrid habitat, in conjunction with the high variability in response to climate change, indicates a threat that may warrant protection for the petitioned fishes under the ESA. Species-specific issues related to this threat are discussed in species-specific sections below.

The petition also presents scientific studies indicating pomacentrid reef fishes show a strong preference for inhabiting live coral rather than sub-lethally bleached or dead corals, and pomacentrid recruitment on bleached and dead corals declines quickly after a bleaching event. However, Bonin *et al.* (2009) and Coker *et al.* (2012), cited in the petition, show no significant difference in settlement of *Pomacentrus moluccensis* or density of *Dascyllus aruanus* (respectively) on healthy versus sub-lethally bleached corals. These two studies only found significantly fewer recruits and lower density on dead corals. As noted earlier, not all corals are subject to mortality from bleaching; for example, Bonin (2012) found an average of only 5.2 percent mortality from bleaching. In addition, the petition argues that bleaching reduces available habitat, leading to increased competition effects, reduced growth rates, and generally negative fitness consequences for pomacentrids. The results of Bonin *et al.* (2009) and Coker *et al.* (2012) only support this claim for bleaching-induced mortality and not bleaching alone. The implications of this for the petitioned species would depend on their individual levels of exposure and susceptibility to habitat that has experienced bleaching and some level of bleaching-induced mortality. This is discussed further for each species in the species sections because, as discussed previously, exposure and response to threats is variable between species.

In general, considering the effects of climate change on damselfishes and their habitat based on the information in the petition and in our files, we acknowledge the growing threat that ocean warming and acidification present to coral reef ecosystems. Even though all species of *Acropora* and *Pocillopora* are likely to be negatively affected by climate change to some degree, the information in the petition and in our files suggests the effects are likely be low to moderate for most species and will be variable both spatially and temporally throughout the ranges of the petitioned species, providing areas of refuge from the potential effects of habitat disturbance. Thus we cannot infer from the general information presented that climate change induced habitat loss by itself is a threat that may warrant protection for these pomacentrids under the ESA.

Overharvest

Under Listing Factor B, the petitioner identified four of the seven petitioned Indo-Pacific species as potentially threatened by overharvest for the marine aquarium fish trade and stated that the harvest of corals threatens all of the petitioned species by removing their habitat. This section addresses overharvest of corals only. The threat of overharvest to the four identified fish species, *A. percula, C. atripectoralis, C. viridis,* and *D. albisella,* is discussed in the relevant species-specific sections below.

The petition states ''[t]he widespread and growing trade in coral reef fish and corals adds to the cumulative stresses that the petitioned pomacentrids face from ocean warming and ocean acidification.'' The petition provides no further information on the threat of harvest of corals as it pertains to the petitioned species. Information in our files suggests that coral trade can have significant local effects on targeted coral species, but the overall contribution of ornamental trade to the extinction risk of 82 species of reef building corals was determined to be a threat of low importance (Brainard *et al.,* 2011). The petition has presented no information, and we have no information in our files, to suggest that the petitioned species are particularly dependent on species of coral that are targeted for trade. Further, we have no information to suggest that this may be an operative threat across all or a significant portion of the range of these species. All hard corals are listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which allows trade but requires findings that trade is sustainable. There is no evidence presented in the petition or in our files that trade in corals may be significantly impacting the available habitat for the petitioned reef fish species. As such, the assertion made in the petition is unsupported and no information was presented to allow us to infer a possible increased extinction risk for any of the petitioned reef fish species due to the harvest of corals.

Adequacy of Regulatory Mechanisms

Under listing Factor D, the petitioner asserts that the petitioned species are warranted for listing under the ESA due to the inadequacy of regulatory mechanisms, specifically addressing greenhouse gas pollution, coral reef habitat protection, and the marine aquarium trade. The petition states that both international and domestic laws controlling greenhouse gas emissions are inadequate and/or have failed to control emissions: ''As acknowledged by NMFS in its *Status Review Report of 82 Candidate Coral Species* and accompanying *Management Report,* national and international regulatory mechanisms have been ineffective in reducing emissions to levels that do not jeopardize coral reef habitats.'' Information in our files and from scientific literature indeed indicates that greenhouse gas emissions have a negative impact to reef building corals (NMFS, 2012). However, beyond this generalized global threat to coral reefs, we do not find that the petition presents substantial information indicating that the effects of greenhouse gas emissions are negatively affecting the petitioned species or their habitat such that they may be at an increased risk of extinction. In particular, the information in the petition, and in our files, does not indicate that the petitioned species may be at risk of extinction that is cause for concern due to the loss of coral reef habitat or the direct effects of ocean warming and acidification. Therefore, inadequate regulatory mechanisms controlling greenhouse gas emissions is not considered a factor that may be causing extinction risk of concern for the petitioned species.

With respect to coral reef habitat protection from localized impacts, the petition quotes Burke *et al.* (2011) as stating, ''more than sixty per cent of the world's coral reefs are under immediate and direct threat from one or more local sources,'' despite international and

domestic efforts to reduce threats to reefs. The petition states ''this high level of threat clearly indicates that existing regulatory mechanisms are inadequate to protect the coral reefs on which the petitioned Pomacentrids depend.'' The petition did not provide an explanation of how petitioned species may be threatened by local sources of impacts to coral reefs. We therefore conclude that the petition does not provide a relevant explanation on how existing regulatory mechanisms for coral reef protection are inadequate and therefore may be increasing the extinction risk of the petitioned Indo-Pacific species.

The petition states that ''United States and international regulations are inadequate to protect the petitioned pomacentrids from threats from the global marine aquarium trade.'' The petition cites Tissot *et al.* (2010) for evidence of ''weak governance capacity in major source countries such as Indonesia and the Philippines; high international demand, particularly from the United States . . . and inadequate enforcement of the few existing laws, allowing collectors to use illegal and harmful collection methods such as sodium cyanide.'' Information presented in the petition and in our files does not indicate that *C. atripectoralis, C. viridis,* or *D. albisella* may be harvested at unsustainable levels for the marine aquarium fish trade (see species specific sections below); accordingly, we conclude the characterization of the risk of harvest to these three petitioned species presented in the petition is unsubstantiated. No information was presented in the petition related to the harvest of *D. reticulatus, P. dickii,* or *P. johnstonianus.* Because overharvest for trade has not been established as an operative threat that may be impacting extinction risk for these six petitioned species, regulatory mechanisms addressing this threat are not considered to be a factor influencing their extinction risk. However, we are unable to estimate the magnitude of impact that the marine aquarium trade may be having on *A. percula's* population, because we have inadequate information to estimate population size for this species.

In summary, we find the petition does not provide substantial information to suggest existing regulatory mechanisms are inadequate and may be causing an extinction risk for six of the petitioned species Indo-Pacific species. This listing factor will be addressed more specifically for *A. percula below.*

Other Natural or Manmade Factors

Under Listing Factor E, the petition states generally that ocean acidification and ocean warming, in addition to causing habitat loss, ''directly threaten the survival of the petitioned species through a wide array of adverse impacts that are predicted to lead to negative fitness consequences and population declines.'' We acknowledge that the potential for physiological impacts as a result of changing temperatures and changing CO_2 levels is not unique to corals; marine species associated with coral reef ecosystems also have the potential to be impacted physiologically by rising ocean temperatures and increased acidification. Similar to our previous discussion on habitat (coral) impacts, considering the likelihood and extent of this threat requires an understanding of the petitioned species' susceptibility and exposure to the threat considered at the appropriate spatial and temporal scales. The petitioner has provided no information to indicate that this threat is currently creating an extinction risk for the petitioned species in the wild, either through impacts to fitness of a significant magnitude or declines in their populations. Thus, we have assessed the information provided by the petitioner and in our files as it pertains to the potential for future impacts to the statuses of the petitioned species. For reasons explained below, we are unable to infer that any of these petitioned species may face an increased extinction risk due to potential future physiological impacts associated with projections of ocean warming and ocean acidification.

The petition states that elevated sea surface temperatures ''can influence the physiological condition, developmental rate, growth rate, early life history traits, and reproductive performance of coral reef fishes, all of which can affect their population dynamics, community structure, and geographical distributions.'' The section of the petition asserting that ocean warming impacts reproductive success and development for the petitioned species relies on references that are general in nature and lack species specific information. (i.e., Munday, 2008; Lo-Yat *et al.,* 2010; Pankhurst and Munday, 2011). Lo-yat *et al.* (2010) examined larval supply of coral reef fishes (including some pomacentrid species) and found that, at their study site in French Polynesia, warmer El Niño conditions reduced larval supply overall by 51 percent, while cooler La Niña conditions increased larval supply by 249 percent. The authors note, however, that outcomes of future climate projections are contradictory when it comes to whether or not El Niño events will become more frequent. In addition, they highlight no less than four other studies that also examined the effects of El Niño and La Niña events on reef fish larval supply and present results which contrast with their results in French Polynesia, leading the authors to conclude that ''our work and the outcomes of these earlier studies suggest that the effect of climatic phenomena such as ENSO [El Niño Southern Oscillation] cycles on reef fish assemblages may be species, context, and location-specific and therefore extremely difficult to predict.'' Munday (2008) and Pankhurst and Munday (2011) provide general summaries of reef fish physiology and the potential future impacts of climate change. Pankhurst and Munday (2011) summarize their conclusion as follows: ''Climate change will, or is already, affecting reproductive and early life history events of most fishes. This is occurring at a variety of levels and through a range of mechanisms which as our understanding develops are emerging as increasingly complex. There is also the very strong suspicion that we are substantially under-informed to make useful predictions about likely effects beyond general assumptions, except for the relatively few species that have received the bulk of research attention.'' As stated previously, vulnerability to a threat is a combination of susceptibility and exposure. We are unable to draw reasonable inferences from this generalized information because it identifies the susceptibility of the petitioned species to a potential future threat but provides no information on the likely level of exposure in the future.

Other references in the petition do offer species-specific results (although not for any petitioned species) showing reduced breeding success of *Acanthochromis polyacanthus* (Donelson *et al.,* 2010) and increased mortality rates among juvenile *Dascyllus aruanus* (Pini *et al.,* 2011) in response to increased ocean temperatures that may be experienced later this century. Multiple references provided state that the effects of temperature changes appear to be species specific (Nilsson *et al.,* 2009; Lo-Yat *et al.,* 2010; Johansen and Jones, 2011); therefore these results are not easily applied to the petitioned species and, due to unknown variation in predicted exposure, are not applicable across an expansive range. Therefore, we are unable to draw reasonable inferences from these reports that the petitioned action may be warranted.

With regard to ocean warming impacts to respiratory and metabolic

processes, Nilsson *et al.* (2009) and Johansen and Jones (2011) compared results of exposure to increased temperatures across multiple families or genera and species of reef fish. Nilsson *et al.* (2009) found that elevated temperatures (31, 32, or 33 degrees C) reduced aerobic capacity 41 to 93 percent for two cardinalfish and three damselfish species tested, indicating variation both between families tested and among species. Cardinalfish response to increasing temperatures was stronger and where cardinalfish lost virtually all capacity for oxygen uptake by 33 degrees C, damselfish species retained over half of their aerobic scope at this maximum temperature. With temperature increases in the future, Nilsson *et al.* (2009) predicted that thermally sensitive species, such as the cardinalfish studied, could decline on low-latitude reefs but also expand at higher latitudes where water temperatures are more favorable, resulting in pronounced range shifts towards higher latitudes. Further, Nilsson *et al.* (2009) described damselfish species, such as *C. atripectoralis,* as more thermally tolerant and predicted that range shifts towards higher latitudes may happen more gradually for these species.

Johansen and Jones (2011) tested wild-captured adult fish in a laboratory setting, exposing them to two temperature treatments representing current average summer temperatures around their habitat (29 degrees C) and the predicted average summer temperature after three degrees C increase in sea temperature following current climate change predictions for the end of this century. They found that increased temperature (32 degrees C) had a significant negative effect across all performance measures examined (for all species except *C. atripectoralis,* where no significant difference was found in swimming ability or metabolic performance), with the magnitude of the effect varying greatly among closely related species and genera. The results indicate increasing temperatures may impair certain species' ability to perform within current habitats (i.e., swimming capacity is reduced below prevailing water flow speeds for some species). Similar to Nilsson *et al.* (2009), Johansen and Jones (2011) suggest that the ecological impacts could include a reduction in species abundance and a shift in distribution ranges, such that some species are forced into different habitats where water flow is weaker to accommodate their reduced swimming capacity or into higher latitudes where performance is retained.

The information provided indicates both the potential for declines of some species in low-latitude reefs, as well as the potential for expansion for these species in higher latitudes or more thermally favorable areas. Both studies suggest species that are specialized to a narrow thermal environment, especially those optimized for colder temperatures, are likely to be the most sensitive to projected changes in temperature. We have no information that suggests the petitioned species are specialized to narrow thermal environments or optimized to colder temperatures. To the contrary, the petitioned species are widely distributed in geographic range and/or depth, which suggests they are less likely to be among the most sensitive to projected changes in temperature.

Many of the authors of the physiology studies discussed above acknowledge that acclimation, developmental plasticity, and genetic adaptation may or may not alleviate some physical and physiological limitations, although capacity for acclimation or adaptation is unknown and was not factored into the experiments. Donelson *et al.* (2011), however, did examine trans-generational plasticity and found rapid acclimation for the damselfish *Acanthochromis polyacanthus* when both parents and offspring were reared throughout their lives at elevated temperature. As noted earlier in this finding, adaptation and acclimatization has been demonstrated in some species of coral (Brainard *et al.* 2011) and the results from Donelson et al.'s (2011), while not specific to the petitioned species, indicates that some tropical marine fish species are likely to have the capacity for acclimation and adaptation to temperature increases at timescales exceeding the rate of climate change.

The petition also states ''ocean acidification impairs the sensory capacity and behavior of larval clownfish and damselfish'' but only provides species-specific information for *A. percula* which is discussed below. Importantly, studies cited in the petition (e.g., Ferrari *et al.,* 2011) demonstrate that there is significant variation in response to increased CO_2, leading to acidification, among species, even among four congeneric pomacentrid species sharing the same habitat and ecology in Australia. Additionally, the studies cited by the petition and in our files emphasize that there is significant individual variation in the response to artificially elevated CO_2. Results from a study by Munday *et al.* (2012) on selective mortality associated with variation in CO_2 tolerance show that half of the juvenile *Pomacentrus wardi* in a high CO_2 treatment of 703 µatm (pH 7.98) were unaffected and exhibited the same behaviors as fish in the control treatment of 425 µatm CO_2 (pH 8.16) when presented with the odor of a predator in lab experiments. Fish categorized as both affected and unaffected based on their response to predator odor in the lab, as well as control fish, were then released in the wild and monitored for mortality over 70 hours. The unaffected individuals from the high CO_2 treatment had 49 percent survival, not significantly different from the control fish, which had 44 percent survival. The affected individuals in the high CO_2 treatment had significantly lower survival at 32 percent. As noted by Munday et al. (2012), these results demonstrate that rapid selection of CO_2 tolerant phenotypes can occur in nature.

Miller *et al.* (2012) also report that trans-generational acclimation can mediate the physiological impacts of ocean acidification on reef fish. Their results show ocean temperature and acidity conditions projected for the end of the century cause an increase in metabolic rate and decreases in length, weight, condition, and survival of juvenile anemonefish (*Amphiprion melanopus*), but all of those effects were absent or reversed when parents also experience high CO_2 concentrations.

In summary, we acknowledge the potential for physiological and behavioral impacts to the marine species due to ocean warming and acidification levels that may occur later this century. However, we find the petition did not present substantial information to indicate this may increase extinction risk for the petitioned species. References provided in the petition acknowledge that there are limitations associated with applying results from laboratory studies to the complex natural environment where impacts will be experienced gradually over the next century at various magnitudes in a non-uniform spatial pattern. Lab experiments presented do not reflect the conditions the petitioned species will experience in nature; instead of experiencing changes in levels of ocean warming and acidification predicted for the end of the century within a single generation, species in nature are likely to experience gradual increases over many generations. The few multi-generational studies that have been completed show evidence of rapid trans-generational acclimation and individual variation that could lead to rapid selection for tolerant phenotypes. These are likely to be influential factors in how changing

environmental conditions are reflected in future populations. The petitioned species (with the exception of *A. percula* for which no population information was available) have high estimated abundances and most are distributed across the entire Indo-Pacific region. While there is much uncertainty regarding the magnitude and spatial patterns of these environmental conditions that may occur sometime in the future, they will not occur uniformly or as rapidly as they were experienced in laboratory studies. Therefore, we cannot draw reasonable inferences about the extinction risk of the petitioned species from this information. For these reasons, information in the petition and in our files does not constitute substantial information that listing may be warranted based on the potential future physiological impacts of ocean warming and acidification. Species-specific information is addressed below.

Species Specific Threat Information

A. percula

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Although the petition broadly states that the petitioned species are habitat specialists that depend on live corals, *A. percula* is the exception. It is described as a habitat specialist due to its symbiotic association with three species of anemone: *Heteractis crispa, Heteractis magnifica,* and *Stichodactyla gigantea* (Ollerton *et al.,* 2007). As habitat specialists, the symbiotic relationship between *A. percula* and their hosts makes this species susceptible to threats that are likely to impact their host anemones; accordingly, we must consider the susceptibility and vulnerability of their host species. The petition states that *A. percula* is threatened by ''bleaching and subsequent loss of anemone habitat resulting from ocean warming'' and cites multiple references as evidence that ocean warming has led to anemone bleaching, which can lead to reductions in anemone abundance and size as well as reduce the density, reproduction, and recruitment of anemone fish. We acknowledge that information presented indicates bleaching events may impact host anemone species by causing reductions in abundance of anemones and/or a reduction in size of bleached anemones (Hattori, 2002; Saenz-Agudelo *et al.,* 2011; Hill and Scott, 2012). In particular, the petition presents information indicating that bleaching events have been shown to negatively impact *H. crispa,* one of the three host anemone species for *A. percula* (Hattori, 2002).

In addition, the geographic range of A. percula is more restricted than the other petitioned species and occurs largely in the Coral Triangle area. A hot spot of ocean warming occurs in the equatorial western Pacific where regional warming is higher than overall warming in the Indo-Pacific, exposing coral reef ecosystems, including anemones, in this area to a higher risk of warming-induced bleaching. The hot spot overlaps the Coral Triangle and a large part of A. percula's range (Couce et al. 2013; Lough 2012; Teneva et al. 2012; van Hooidonk et al. 2013b).

Factor B: Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The petitioner claims that *A. percula* is being overharvested for the marine aquarium trade. Rhyne *et al.* (2012) indicate that in 2005 the species complex of *A. ocellaris/percula* was the fifth most commonly imported marine aquarium species into the United States, with more than 400,000 individuals in that year. These numbers are an accumulation of data from 39 countries where the Philippines, Indonesia, and Sri Lanka are listed as the top three exporting countries, but we do not have data on the exact amount of exports of this species complex from each country. We do know that the Philippines and Indonesia alone accounted for 86.6% of all reef fish individuals imported to the U.S. in 2005 (Rhyne *et al.,* 2012). It is of note that the Philippines and Indonesia are outside the reported range of *A. percula,* but inside the range of *A. ocellaris,* so import estimates from these countries are not relevant to the petition's statements regarding harvest or trade of *A. percula.* We also know from Rhyne *et al.* (2012) that within the range of *A. percula,* at least 255 different species of reef fish, totaling just over 200,000 individuals, were exported to the U.S in 2005. Data in Rhyne *et al.* (2012) for the countries within *A. percula's* range do not suggest that total import numbers were skewed heavily toward one or a few species. Given the above information we can only infer that total *A. percula* imports to the U.S. were less than 200,000 individuals. As noted in the species description above, *A. percula* does not occur within U.S. Pacific possessions and we therefore have no information in our files regarding estimated global population size. Additional references in the petition regarding trade of *A. percula* indicate an increased consumer interest in *A. percula* following the release of the ''Finding Nemo,'' computer-animated film in 2003, but provide no additional information about the overharvest threats to this species in the wild (Osterhoudt, 2004; Prosek, 2010). In the absence of information on abundance, we are unable to determine how the harvest of up to 200,000 individuals annually may impact the status of *A. percula.*

Factor D: Inadequacy of Regulatory Mechanisms

There was no discussion in the petition of regulatory mechanisms specific to this species. However, references provided by the petitioner question the sustainability of management practices associated with the global aquarium trade indicating that in many cases the status of targeted species is largely unknown (Jones et al. 2008; Rhyne et al. 2012). With no additional information regarding the abundance of A. percula, we are unable to determine if current management regimes are sufficient to prevent overharvest. Because we have determined that substantial information has been presented to indicate that listing may be warranted for *A. percula* due to potential impacts from habitat disturbance, we will need to further evaluate whether regulatory mechanisms may be inadequate to address these threats.

In summary, we find that the petition presents substantial information that A. percula may be warranted for listing due to species specific threats identified under listing Factor A. We will be seeking additional information on all threats to *A. percula* and conducting a full status review for this species (see below), at which time we will fully analyze the level of extinction risk posed by all of the identified threats, both individually and combined.

C. atripectoralis

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

In the species section, the petition states that *C. atripectoralis,* ''is closely associated with branching corals, especially *Acropora* and *Pocillopora,* for shelter, reproduction, and recruitment,'' citing Wilson *et al.* (2008a) and Lewis (1998). The petition also states that declines in *C. atripectoralis* have resulted from coral loss due to this close association (Lewis, 1998; Wilson *et al.,* 2006). With regard to these references, we consider whether the species-specific information on declines resulting from changes to coral habitat may indicate the possibility of increased

extinction risk for *C. atripectoralis* as a species.

Lewis (1998) examined impacts to the *C. atripectoralis/viridis* species complex after coral bommies (coral heads) were physically destroyed by a hammer. Lewis (1998) found that numbers of the *C. atripectoralis/viridis* species complex varied after disturbance of coral bommies, but overall these species showed a significant decline post disturbance. At the same time, several of the undisturbed (or control) bommies showed large increases of the species complex after the disturbance that could not be explained by recruitment, and Lewis (1998) noted that immigration likely occurred from disturbed locations. Coral loss in the Lewis (1998) study was described by the authors as comparable to small scale anthropogenic disturbances like anchor damage and destructive fishing. Results from this study indicate that *C. atripectoralis* shows a preference for structurally intact coral habitat over damaged habitat. However, we find this conclusion unhelpful for extrapolating the likely impacts to this species due to climate change affecting corals since the cause of disturbance is dissimilar to impacts associated with bleaching events, which generally leave the structural integrity of corals intact for at least a period of time, and do not always result in coral mortality. The results from this study suggest that small habitat disturbance may result in small area declines or shifts to areas where habitat conditions are more favorable. As discussed in the general impacts section above, future climate change impacts to coral reef habitat will be highly variable within the range of *C. atripectoralis* and the available information suggests that bleaching impacts to *Acropora* and *Pocillopora* corals thus far, and in the foreseeable future, will be low to moderate on average, with a subset of species showing higher vulnerability.

Wilson *et al.* (2006) is a meta-analysis of species-specific results from 17 independent studies (including Lewis (1998)) and presents mean values for change in fish abundance for 55 species of reef fish related to change in coral cover due to various types of disturbances calculated from four or more locations. The authors note that *C. atripectoralis* did not show consistency in response, though overall decline averaged about 60 percent of coral loss. This review paper does not provide any further detail regarding which or how many of the 17 studies included *C. atripectoralis* and therefore in how many cases there was decline, the magnitude of decline, the sampling timeframe, or the cause of coral cover loss in relation to this species. As such, we reviewed the studies on which this analysis was based. We found *C. atripectoralis* was included in five studies showing variable results in response to coral loss. These results range from an observed increase over time after the 1998 mass bleaching event in the Seychelles (Spalding and Jarvis, 2002), to showing no impact in response to coral cover loss of 16–59 percent due to a crown of thorns starfish outbreak (Pratchett, 2001) or coral loss due to a tropical cyclone (Cheal *et al.,* 2002). In Lewis (1998), addressed above, the *C. atripectoralis/C. viridis* complex declined 38 percent in response to a 34 percent decline in coral cover due to destruction with a mallet, which means the fish decline was 112 percent of coral cover decline in this case which heavily influences the average overall reported in Wilson *et al.* (2006) (although as noted above, some of the reduced abundance on damaged bommies was immigration to nearby control sites, not mortality). Again, we find the cause of disturbance in this study dissimilar to impacts associated with bleaching events, which generally leave the structural integrity of corals intact for at least a period of time, and do not always result in coral mortality. Given that the majority of studies showed increases or no effect to *C. atripectoralis,* we cannot reasonably infer from this study that this species may be at increased risk of extinction from this threat.

Overall, the petition establishes that this species prefers branching corals as adults and branching and plate corals as juveniles, but can be found with other coral species in its territory (Wilson *et al.,* 2008b). Pratchett (2001) observed *C. atripectoralis* to commonly inhabit dead corals as well. The information also shows positive and neutral responses to habitat disturbance at the local scale. In order to evaluate the significance of the evidence presented, we consider whether the conditions that led to, or may lead to, declines may be experienced throughout all or a significant portion of the species range. Based on the information in the petition and in our files, we cannot reasonably infer that *C. atripectoralis* is likely to be experiencing the type or magnitude of coral loss exhibited in the studies discussed above throughout all or a significant portion of its expansive geographic range. Coral reefs are naturally dynamic environments that experience regular cycles of disturbance and recovery on a local scale from a range of impacts including storms, bleaching events, predator outbreaks, or others. These results for *C. atripectoralis* are representative of this natural cycle on a local scale. While these examples of localized decline due to habitat disturbance show some negative effects on *C. atripectoralis* in at least one location on the Great Barrier Reef, we do not believe these negative effects are large enough to impact the status of the global population of *C. atripectoralis* because best available data indicate it likely numbers in the hundreds of millions and is distributed across the entire Indo-Pacific region. The evidence of mostly neutral or positive responses to habitat disturbance does not allow us to reasonably infer that *C. atripectoralis* may be at increased extinction risk in the future either, even when considering the potential for increased habitat disturbances due to climate change.

We find that substantial information has not been presented to indicate a concern for the extinction risk of this species due to the destruction, modification, or curtailment of its habitat or range.

Factor B: Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The petitioner asserts that analyses of the aquarium fisheries in Hawaii, the Philippines, and Florida indicate that damselfish, including *C. atripectoralis,* may face threats from overharvest. The only reference provided in the petition with information specific to *C. atripectoralis* (Nanola *et al.,* 2010) indicates its density is lower in one region of the Philippines compared to its densities in other regions of the Philippines. The authors note that there are reports of intense fishing and habitat degradation in the area with lower *C. atripectoralis* density; however, no causal relationship was investigated to determine why the density of the species was lower in one region versus others. No additional information was provided in this reference with regard to the harvest of *C. atripectoralis.*

The petitioner also cited Rhyne *et al.* (2012) which state *C. viridis* is the most commonly imported marine aquarium species into the U.S., accounting for nine percent of imports and more than 900,000 individuals each year. Figures reported for *C. viridis* actually represent a complex of three species, including *C. atripectoralis.* No further explanation of what proportions those three species make up of the total, the magnitude of harvest in relation to global population size, or how harvest for the marine aquarium trade affects extinction risk for any of the three species in the species complex was provided. As noted in the species description above,

we estimate the current global abundance of the *C. atripectoralis/C. viridis* species complex to be in the hundreds of millions. The import of 900,000 individuals per year represents a very small percentage of that overall global population estimate. Notably, a third species of *Chromis* is also represented in the import numbers so the proportion of *C. atripectoralis* harvested in relation to its overall abundance may be even smaller.

The petitioners do not provide information that the level of harvest of this species may be unsustainable. They have simply identified a potential threat and provided no other demographic information, leaving no basis upon which to reasonably infer that harvest may be increasing the extinction risk of this species. Accordingly, we cannot reasonably infer from these reports that this species may be facing an extinction risk across all or a significant portion of its range due to overharvest.

Factor D: Inadequacy of Existing Regulatory Mechanisms

There was no discussion in the petition of regulatory mechanisms specific to this species. The evaluation of the general information provided in the petition regarding inadequacy of regulatory mechanisms above applies here. As such, substantial information has not been provided to indicate that inadequacy of regulatory mechanisms may be contributing to increased extinction risk for *C. atripectoralis.*

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

For *C. atripectoralis,* the petitioner discusses two studies to suggest that increased ocean temperatures will reduce aerobic capacity for this species. One of the references provided with species-specific information reports *C. atripectoralis* showed no significant changes in consumption of oxygen at a resting rate or maximum oxygen uptake during swimming, but displayed a significant fall in aerobic scope from 300 (with a standard deviation of 28 percent) at 29 degrees C to 178 (with a standard deviation of 55 percent) at 33 degrees C; the authors also describe *C. atripectoralis* as a thermally tolerant species (Nilsson *et al.,* 2009). These authors suggest that thermally tolerant species such as *C. atripectoralis* may experience gradual range shifts overtime. Johansen and Jones (2011) showed no significant difference for *C. atripectoralis* in swimming or metabolic performance in response to a three degrees C increase in water temperature (29 to 32 degrees). We acknowledge the potential for increased ocean temperatures that may occur later this century to have physiological impacts on the petitioned species, however the information presented in the petition for *C. atripectoralis* shows that the potential negative effect by itself, combined with the thermal tolerance demonstrated, does not allow us to infer an extinction risk due to the potential future physiological impacts of climate change that is cause for concern.

C. viridis

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petition argues that *C. viridis* is threatened by habitat loss and degradation of coral reef habitat due to temperature-induced mass bleaching events and ocean acidification. The petitioner describes *C. viridis* as a coral habitat specialist and states that, ''many studies have reported *C. viridis'* close association with a narrow set of branching coral species as juveniles and adults,'' citing multiple references (Allen, 1991; Booth, 2002; Lecchini *et al.,* 2005; Ben-Tzvi *et al.,* 2008; Froukh and Kochzius, 2008). Although it is not apparent from the references provided that this species relies on a ''narrow set of branching coral species,'' we do acknowledge that this species is commonly observed associated with branching corals.

The petition cites several references to demonstrate that *C. viridis* is negatively impacted by coral habitat loss or degradation, which are discussed below. The petitioner asserts that *C. viridis* has ''been shown to decline sharply following the loss of live coral habitat from bleaching and other disturbances,'' citing Nilsson *et al.* (2009). However, the Nilsson *et al.* (2009) study examined how elevated temperature impacts respiratory scope for several species of pomacentrids (not including *C. viridis*) and does not examine impacts of habitat loss on any species. Rather the study cites two other papers referenced in the petition for habitat loss (Wilson *et al.,* 2006 and Pratchett *et al.,* 2008), neither of which include any information on *C. viridis.* As discussed in the previous section, *C. viridis* was reported as part of a species complex with *C. atripectoralis* in Lewis (1998) and this study provides no additional information to suggest that extinction risk is heightened for either of these species.

The petition states, ''[i]n a survey of a portion of the GBR that experienced bleaching during the 1997–98 mass bleaching event, Booth and Beretta (2002) found that numbers of *C. viridis* collapsed after the bleaching event. . . .'' Booth and Beretta (2002) examined changes in recruitment and density of reef fish after a coral bleaching event in One Tree Island lagoon in Australia and found that the density of three different species of pomacentrids dropped at bleached sites. The authors note that the numbers of several species, including *C. viridis,* may have been seriously reduced as a result of the bleaching event; however, they were unable to quantitatively assess density changes for this species because survey methods were unsuitable for assessing species that had a highly patchy distribution at the study site.

Overall, the petition establishes that this species is commonly observed associated with branching corals and the work of Ben-Tzvi *et al.* (2008) shows preference for settlement and recruitment of juveniles to *Acropora* species. The information also provides two examples of negative responses to habitat disturbance at the local scale (Booth and Beretta 2002; Lewis 1998). In order to evaluate the significance of the evidence of a negative response to a threat that has been presented, we consider whether the conditions that led to declines may be experienced throughout all or a significant portion of the species range. Based on the information in the petition and in our files, we do not believe that *C. viridis* is likely to be experiencing the type or magnitude of coral loss exhibited in Lewis (1998) or Booth and Beretta (2002) throughout all or a significant portion of its expansive geographic range, nor is it likely to in the future. Coral reefs are naturally dynamic environments that experience regular cycles of disturbance and recovery on a local scale from a range of impacts including storms, bleaching events, predator outbreaks, or other threats. These results for *C. viridis* are representative of this natural cycle on a local scale. While these examples of localized decline due to habitat disturbance show clear negative effects on *C. viridis* at two locations on the Great Barrier Reef, we have no information to suggest that these localized effects are large enough to impact the status of the entire species because the best available data indicate it likely numbers in the hundreds of millions and is distributed across the entire Indo-Pacific region. As summarized above, information in our files regarding live coral cover confirms that there has been a long-term overall decline in live coral cover in the Indo-

Pacific, and that those declines are likely ongoing and likely to continue in the future due to a multitude of global and local threats at all spatial scales. However, live coral cover trends are complex, dynamic, and highly variable across space and time. Even though all species of *Acropora* and *Pocillopora* are likely to be negatively affected by climate change to some degree, the information in the petition and in our files suggests low to moderate effects for most species that will be variable both spatially and temporally throughout the range of *C. viridis,* providing areas of refuge from the potential effects of habitat disturbance. We find that substantial information has not been presented to indicate a concern for the extinction risk of this species at the population level due to the destruction, modification, or curtailment of its habitat or range.

Factor B: Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The petitioner cited Rhyne *et al.* (2012) which states *C. viridis* is the most commonly imported marine aquarium species into the U.S., accounting for nine percent of imports and more than 900,000 individuals each year. However, this study is based on one year of information collected from import invoices in the U.S. and does not report annual averages as characterized by the petition. Nevertheless, we have no information to indicate the figures cited do not represent a typical year. In addition, figures reported for *C. viridis* represent a complex of three species (which also includes the petitioned species *C. atripectoralis*), not *C. viridis* alone, indicating that the numbers for *C. viridis* are actually lower than those presented in the petition. No further explanation of the magnitude of harvest in relation to global population size of *C. viridis* or how harvest for the marine aquarium trade affects its extinction risk was provided.

As noted in the species description above, we estimate the global abundance of the *C. atripectoralis* and *C. viridis* species complex to be in the hundreds of millions. The annual import of a maximum of 900,000 represents a very small percentage of this global population estimate. Notably, this percent may be lower as a third species of *Chromis* is also represented in the harvest numbers.

The petitioners do not provide information that the level of harvest of this species may be unsustainable. They have simply identified a potential threat and given no other demographic information, leaving no basis upon which to infer that harvest may be increasing the extinction risk of this species. Accordingly, we cannot infer from this information that this species may be facing increased extinction risk across all or a significant portion of its range due to overharvest.

Factor D: Inadequacy of Existing Regulatory Mechanisms

There was no discussion in the petition of regulatory mechanisms specific to this species. The evaluation of the general information provided in the petition regarding inadequacy of regulatory mechanisms above applies here. As such, substantial information has not been provided to indicate that inadequacy of regulatory mechanisms may be contributing to increased extinction risk for *C. viridis.*

Factor E: Other Natural or Manmade Factors Affecting its Continued Existence

No species-specific information was provided regarding the effects of increased ocean warming or acidification on *C. viridis.* The evaluation of the general information provided in the petition above regarding ocean acidification and warming applies here. While we acknowledge the potential for *C. viridis* to experience physiological impacts due to levels of ocean warming and/or acidification that may occur later this century, we find that the petition does not present substantial information indicating this species may be warranted for listing due to these factors affecting its extinction risk.

D. albisella

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petition claims that *D. albisella* is threatened by habitat loss and degradation of coral reef habitat due to temperature-induced mass bleaching events and ocean acidification, specifically arguing that *D. albisella* is dependent on live branching *Pocillopora* species for larval settlement and juvenile habitat. The petition cites Allen (1991), Booth (1992), and Randall (1985) to describe the habitat characteristics for *D. albisella.* Additional information in our files provides more detail with respect to *D. albisella's* habitat use, as discussed below. The petitioner cites DeMartini *et al.* (2010) to support the claim that *D. albisella* juveniles are obligately associated with branching *Pocillopora* corals. However, DeMartini *et al.* (2010) actually describe *D. albisella's* habitat requirements as obligately associated with rugose corals, which describes the species' need for structure during the recruitment stage, not a constraint to a particular taxa of corals. The study also showed that rugose corals within the study area ranged from low to high susceptibility to bleaching, similar to the coral response variation discussed above.

The petitioner provides no abundance or density information for this species, however our internal files indicate that *D. albisella* is a commonly observed species at multiple depths throughout its range, associating with multiple habitat types. In shallow waters (less than 15 meters), it was ranked first (out of 113 taxa) in mean numerical density over seven years of surveys and second in mean biomass surveyed over seven years at one site, and second (out of 109 taxa) in density and fifth in biomass at another site (DeMartini *et al.,* 2002). In a depth range of 30 to 40 meters, it was ranked third out of 35 species of fish in terms of how many survey stations at which it was observed and third in terms of mean number observed per station (Parrish and Boland, 2004). The authors note that all available data indicate the 30 to 40 meter habitats of northwestern Hawaiian island banks are substantially different from shallower reef habitats, like those in DeMartini *et al.* (2010), however they still observed *D. albisella* as a common species. In deeper waters (50 to 73 meters), it was ranked first in terms of the number of black coral trees in which it was observed, and ninth for mean fishes per tree out of 40 taxa (Boland and Parrish, 2005). In addition, Chave and Munday (1994) report *D. albisella* as common down to 84 meters depth on or above various substrates.

Additional information readily available in our files includes a study that documented *D. albisella* juvenile recruitment to experimental wire mesh coils in depths of four to eight meters on open sand flats (Schroeder, 1985). Results of this study indicate that recruitment is not dependent upon live branching *Pocillopora* corals, as stated in the petition, as we believe these results show that the species is only dependent on three-dimensional structure, which the wire mesh coils represent. Thus, the information in our files does not support the petitioner's claim that *D. albisella* is dependent on live branching *Pocillopora* for larval settlement and juvenile habitat or other aspects of survival. It does, however, support the fact the *D. albisella* is commonly observed among branching corals or other rugose habitat structures over a broad depth range.

The petition does not provide any specific information indicating coral habitat loss due to temperature-induced mass bleaching events and ocean acidification (or any other cause) has affected the status of the species. As such, we cannot infer that loss or degradation of coral reef habitat is a threat to the species to the extent it may warrant protection under the ESA.

Factor B: Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The petitioner argues that analyses of the aquarium fisheries in Hawaii, the Philippines, and Florida indicate that damselfish, including *D. albisella,* may face threats from overharvest. The only reference provided with information specific to *D. albisella* (Stevenson *et al.,* 2011) reports information from fisher surveys indicating *D. albisella* has a high 'electivity index' which is a measure of fisher's preference for fish caught. No actual catch information was provided for *D. albisella.* No information was presented on the magnitude of harvest in relation to global population size or how harvest for the marine aquarium trade affects extinction risk for these species. As noted above in the species description, the mean global population estimate for *D. albisella* is 11,493,000. We found no additional information in our files indicating that overharvest may be an operative threat acting on this species and affecting its extinction risk.

Factor D: Inadequacy of Existing Regulatory Mechanisms

There was no discussion in the petition of regulatory mechanisms specific to this species. The evaluation of the general information provided in the petition regarding inadequacy of regulatory mechanisms above applies here. As such, substantial information has not been provided to indicate that inadequacy of regulatory mechanisms may be contributing to increased extinction risk for *D. albisella.*

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

No species-specific information was provided regarding the effects of increased ocean warming or acidification on *D. albisella.* The evaluation of the general information provided in the petition above regarding ocean acidification and warming applies here. While we acknowledge the potential for *D. albisella* to experience physiological impacts due to levels of ocean warming and/or acidification that may occur later this century, we find that the petition does not present substantial information indicating this species may be warranted for listing due to these factors affecting its extinction risk.

D. reticulatus

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

As noted above, the petition states that ''the petitioned pomacentrid reef fish are habitat specialists that directly depend on live corals for survival, including shelter, reproduction, recruitment, and food.'' In the species section, the petitioner provides more details on this species and states that *D. reticulatus* is ''closely associated with branching corals as juveniles and adults,'' citing Allen (1991), Lewis (1998), Randall (2005), and Wilson *et al.* (2008a). We acknowledge that this species is commonly associated with branching corals based on the information provided in the petition. Wilson *et al.* (2008) established that adults show a preference for branching and plate corals while avoiding soft corals.

The petition also states that declines in *D. reticulatus* have been documented as a result of coral loss and cites Lewis (1998). Lewis found that numbers of *D. reticulatus* declined after disturbance of coral bommies (coral heads). Again, we find the cause of disturbance in this study (e.g., by mallet) dissimilar to impacts associated with bleaching events, which generally leave the structural integrity of corals intact for at least a period of time, and do not always result in coral mortality. *Dascyllus reticulatus* is also included in the results reported in Wilson *et al.* (2006). As discussed above, Wilson *et al.* (2006) is a meta-analysis of 17 independent studies (including Lewis, 1998) and present mean values for changes in fish abundance for 55 species of reef fish related to changes in coral cover due to various types of disturbance calculated from four or more locations. *Dascyllus reticulatus* showed average declines larger than the declines in coral but was included in the group of species that did not show consistent responses to coral loss in all cases. This review paper does not provide any further detail regarding which of the 17 studies included *D. reticulatus* and therefore in how many cases there was decline, the magnitude of decline, the sampling timeframe, or the cause of coral cover loss in relation to this species. We found *D. reticulatus* was included in four studies conducted at three sites on the Great Barrier Reef. The results for *D. reticulatus* show variable responses to coral loss ranging from a slight increase at one site and slight decrease at another one year after a tropical cyclone (Cheal *et al.,* 2002), to a 70 percent decline one year after a crown of thorns starfish outbreak that resulted in 16–59 percent coral cover loss (Pratchett, 2001), to exhibiting dramatic declines of near 100 percent after experimental habitat disturbance consisting of breaking up all hard corals on the patch reef, resulting in essentially 100 percent coral loss (Syms and Jones, 2000).

In order to evaluate the significance of the evidence presented, we consider whether the conditions that led to declines may be experienced throughout all or a significant portion of the species range. Based on the information in the petition and in our files, we do not believe that *D. reticulatus* is likely to be experiencing the type or magnitude of coral loss exhibited in the studies discussed above throughout all or a significant portion of its range, nor is it likely to in the future. Coral reefs are naturally dynamic environments that experience regular cycles of disturbance and recovery on a local scale from a range of impacts including storms, bleaching events, predator outbreaks, or others. These results for *D. reticulatus* are representative of this natural cycle on a local scale. While these examples of localized decline due to habitat disturbance show some negative effects on *D. reticulatus* at three locations on the Great Barrier Reef, we have no information to suggest that these localized effects are large enough to impact the status of the entire species because best available data indicate it likely numbers in the billions and is distributed across the entire Indo-Pacific region. As summarized above, information in our files regarding live coral cover confirms that there has been a long-term overall decline in live coral cover in the Indo-Pacific, and that those declines are likely ongoing and likely to continue in the future due to a multitude of global and local threats at all spatial scales. However, live coral cover trends are complex, dynamic, and highly variable across space and time. Even though all species of *Acropora* and *Pocillopora* are likely to be negatively affected by climate change to some degree, the information in the petition and in our files suggests low to moderate effects for most species that will be variable both spatially and temporally throughout the range of *D. reticulatus,* providing areas of refuge from potential future threats that are not spatially uniform. We find that substantial information has not been

presented to indicate a concern for the extinction risk of this species at the population level due to the destruction, modification, or curtailment of its habitat or range.

Factor D: Inadequacy of Existing Regulatory Mechanisms

There was no discussion in the petition of regulatory mechanisms specific to this species. The evaluation of the general information provided in the petition regarding inadequacy of regulatory mechanisms above applies here. As such, substantial information has not been provided to indicate that inadequacy of regulatory mechanisms may be contributing to increased extinction risk for *D. reticulatus.*

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

For *D. reticulatus,* the petitioner states increased temperature will negatively affect aerobic performance and swimming ability, citing Johansen and Jones (2011). In this study, *D. reticulatus* adults exposed to a high temperature (32 degrees C) environment in a laboratory setting displayed significantly reduced swimming and metabolic performance (Johansen and Jones, 2011). In addition, there is some evidence of adaptation/acclimation to future environmental conditions in pomacentrid species. *Dascyllus reticulatus* has high estimated abundance and is distributed across the entire Indo-Pacific region; though there is much uncertainty regarding the magnitude and spatial patterns of these environmental conditions that may occur sometime in the future, they will not occur uniformly or as rapidly as they were experienced in laboratory studies. Therefore, we cannot draw reasonable inferences about the extinction risk of *D. reticulatus* from this information.

P. dickii

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

As noted above, the petition states that ''the petitioned pomacentrid reef fish are habitat specialists that directly depend on live corals for survival, including shelter, reproduction, recruitment, and food.'' More specifically in the species section, the petitioner claims that many sources report a ''strong association'' of *P. dickii* adults with live branching *Acropora* and *Pocillopora* corals, citing Jones *et al.* (2006) and Emslie *et al.* (2012). We acknowledge that this species is commonly observed associated with branching corals, based on the information provided in the petition, and relies on coral branches for algal farming and nest sites. As such, the species may therefore be impacted by changes to this habitat type.

The petition references studies by Wilson *et al.* (2008b) and the Australian Institute of Marine Science (AIMS, 2012) to describe impacts of habitat loss, reporting that both studies found *P. dickii* declined significantly following the loss of *Acropora* coral cover in Fiji and loss of hard coral cover due to storm damage at Hoskyn's Reef on the Great Barrier Reef, respectively. *Plectroglyphidodon dickii* is also included in just one of the studies considered in the Wilson *et al.* (2006) meta-analysis. Lindahl *et al.* (2001) found a significant decline of approximately 68 percent in *P. dickii* after the 1998 mass bleaching event in Tanzania in response to an 88 percent coral loss. In order to evaluate the significance of the evidence presented, we consider whether the conditions that led to declines may be experienced throughout all or a significant portion of the species range. Based on the information in the petition and in our files, we do not believe that *P. dickii* is likely to be experiencing the type or magnitude of coral loss exhibited in the studies discussed above throughout all or a significant portion of its expansive geographic range, nor is it likely to in the future. Coral reefs are naturally dynamic environments that experience regular cycles of disturbance and recovery on a local scale from a range of impacts including storms, bleaching events, predator outbreaks, or others. These results for *P. dickii* are representative of this natural cycle on a local scale. While these examples of localized decline due to habitat disturbance show clear negative effects on assemblages of *P. dickii* at one location on the Great Barrier Reef and one in Fiji, we do not believe these negative effects are large enough to impact the status of *P. dickii* because the best available data indicate it likely numbers in the billions and is distributed across the entire Indo-Pacific region. As summarized above, information in our files regarding live coral cover does not dispute that there has been a long-term overall decline in live coral cover in the Indo-Pacific, and that those declines are likely ongoing and likely to continue in the future due to a multitude of global and local threats at all spatial scales. However, live coral cover trends are complex, dynamic, and highly variable across space and time. Even though all species of *Acropora* and *Pocillopora* are likely to be negatively affected by climate change to some degree, the information in the petition and in our files only suggests effects are likely be low to moderate for most species and will be variable both spatially and temporally throughout the range of *P. dickii,* providing areas of refuge from habitat disturbances that are not spatially uniform. We find that substantial information has not been presented to indicate a concern for the extinction risk of this species at the population level due to the destruction, modification, or curtailment of its habitat or range.

Factor D: Inadequacy of Existing Regulatory Mechanisms

There was no discussion in the petition of regulatory mechanisms specific to this species. The evaluation of the general information provided in the petition regarding inadequacy of regulatory mechanisms above applies here. As such, substantial information has not been provided to indicate that inadequacy of regulatory mechanisms may be contributing to increased extinction risk for *P. dickii.*

Factor E: Other Natural or Manmade Factors Affecting its Continued Existence

No species-specific information was provided regarding the effects of increased ocean warming or acidification on *P. dickii.* The evaluation of the general information provided in the petition above regarding ocean acidification and warming applies here. While we acknowledge the potential for *P. dickii* to experience physiological impacts due to levels of ocean warming and/or acidification that may occur later this century, we find that the petition does not present substantial information indicating this species may be warranted for listing due to these factors affecting its extinction risk.

P. johnstonianus

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petitioner argues that *P. johnstonianus* is threatened by coral habitat loss or degradation due to the species' dependence on live coral for shelter, food, and reproduction. Specifically, the petition states this species is ''considered highly dependent on live coral for shelter, food, and reproduction,'' citing Cole *et al.* (2008) and Emslie *et al.* (2012). They also cite Allen (1991) and Randall (2005)

generally with regard to use of *Acropora* and *Pocillopora* corals as habitat. We acknowledge that this species is commonly observed associated with branching corals and is likely a corallivore based on the information provided in the petition. As such, the species may therefore be impacted by changes to this habitat type.

The petitioner reports *P. johnstonianus* to be an obligate corallivore, listing *Acropora* and *Montipora* species as ''major'' dietary items and *Pocillopora* and *Porites* species as ''moderate'' dietary items based on Cole *et al.* (2008). In Cole *et al.* (2008), corallivores are defined as obligate when more than 80 percent of their diet is centered on coral. Cole *et al.* (2008) base their assessment of obligate corallivory on two studies they cite. The petition also cites Randall (2005) that the species feeds mainly on coral polyps.

The four coral genera that are reported to be included in *P. johnstonianus'* diet are comprised of more than 300 individual species. As discussed throughout this finding, thermal tolerance varies widely between even closely related coral species and depends on a multitude of factors including taxa, geographic location, biomass, previous exposure, frequency, intensity, and duration of thermal stress events, gene expression, and symbiotic relationships. The petition did not provide further detail on, or any climate change susceptibility information for preferred dietary items. According to Foden *et al.* (2013), 85 percent of the 308 species they assessed within those four genera have low vulnerability to climate change threats. In the absence of more detailed information regarding the diet requirements of *P. johnstonianus,* we defer back to our assessment of information in our files which indicates that even though all species of branching coral are likely to be negatively affected by coral bleaching to some degree, the information in the petition and in our files suggests the effects are likely be low or moderate for most branching coral species. As such, we cannot infer that climate change impacts to *P. johnstonianus'* preferred food items may be cause for concern for increased extinction risk of this species.

The petition references studies by Wilson *et al.* (2008b) and the Australian Institute of Marine Science (AIMS, 2012) to describe impacts of habitat loss, reporting that both studies found *P. johnstonianus* declined significantly following the loss of *Acropora* coral cover in Fiji and loss of hard coral cover due to storm damage at Hoskyn's Reef on the Great Barrier Reef, respectively. Two additional references (Wilson *et al.,* 2006; Pratchett *et al.,* 2008) are meta-analyses of multiple studies showing changes in coral reef fish abundance concurrent with coral loss over variable periods of time due to various types of disturbance (Wilson *et al.,* 2006) or specifically a mass bleaching event (Pratchett *et al.,* 2008). Pratchett *et al.* (2008) combine species specific results from six independent studies that collectively report on 116 species of reef fish, while Wilson *et al.* (2006) combine species specific results from 17 independent studies that collectively report on 55 species of reef fish. We found only one study (cited in both meta-analyses) that includes information for *P. johnstonianus.* Spalding and Jarvis (2002) found *P. johnstonianus* declined significantly at all three Seychelles survey sites one year after the 1998 mass bleaching event. Declines ranged from 74 percent with 84 percent coral loss, to 75 percent with 95 percent coral loss, to 38 percent with 65 percent coral loss at the three study sites.

As noted with the other species, localized decline in response to habitat disturbance is not unexpected for any species. In order to evaluate the significance of the evidence presented, we consider whether the conditions that led to declines may impact the species throughout all or a significant portion of the species range. Based on the information in the petition and in our files, we have no basis to infer that *P. johnstonianus,* an apparently abundant and widely distributed species, is experiencing the type or magnitude of coral loss exhibited in the studies discussed such that it is threatened with extinction throughout all or a significant portion of its range. Coral reefs are naturally dynamic environments that experience regular cycles of disturbance and recovery on the local scale from a range of impacts including storms, bleaching events, predator outbreaks, or others. These results for *P. johnstonianus* are representative of this natural cycle on a local scale. While these examples of localized decline due to habitat disturbance show clear negative effects on assemblages of *P. johnstonianus* at three locations (one site on the Great Barrier Reef, Fiji and the Seychelles), there is no basis to infer that these negative effects are large enough to impact the status of *P. johnstonianus.* The best available data indicate that the species likely numbers in the billions and is distributed across the entire Indo-Pacific region.

As summarized above, information in our files regarding live coral cover does not dispute that there has been a long-term overall decline in live coral cover in the Indo-Pacific, and that those declines are likely ongoing and likely to continue in the future due to a multitude of global and local threats at all spatial scales. However, live coral cover trends are complex, dynamic, and highly variable across space and time. Even though all species of *Acropora* and *Pocillopora* are likely to be negatively affected by climate change to some degree, the information in the petition and in our files suggests the effects are likely be low to moderate for most species and will be variable both spatially and temporally throughout the range of *P. johnstonianus,* providing areas of refuge from the potential effects of habitat disturbance that is not spatially uniform. We find that substantial information has not been presented to indicate a concern for the extinction risk of this species at the population level due to the destruction, modification, or curtailment of its habitat or range.

Factor D: Inadequacy of Existing Regulatory Mechanisms

There was no discussion in the petition of regulatory mechanisms specific to this species. The evaluation of the general information provided in the petition regarding inadequacy of regulatory mechanisms above applies here. As such, substantial information has not been provided to indicate that inadequacy of regulatory mechanisms may be contributing to increased extinction risk for *P. johnstonianus.*

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

No species-specific information was provided regarding the effects of increased ocean warming or acidification on *P. johnstonianus.* The evaluation of the general information provided in the petition above regarding ocean acidification and warming applies here. While we acknowledge the potential for *P. johnstonianus* to experience physiological impacts due to levels of ocean warming and/or acidification that may occur later this century, we find that the petition does not present substantial information indicating this species may be warranted for listing due to these factors affecting its extinction risk.

Interaction and Summation of Section 4(a)(1) Factors

Finally, we have considered whether there are cumulative or synergistic effects to any of the petitioned reef fish species from the combined impacts of threats identified in the petition, such

that even if each threat individually does not result in population-level effects that may warrant protection for these fishes under the ESA, those cumulative or synergistic effects may be significant and meet our 90-day finding standard.

For *A. percula,* we find the petition presents substantial information to indicate this species may be warranted for listing. As such, we will conduct a status review and include a detailed assessment of the potential for synergistic effects of the Section 4(a)(1) factors on this species. We request information on any potential interactions through the public comment process (see below).

For the other six petitioned species, we have specifically considered whether two or more of the threats assessed above (loss of coral reef habitat due to climate change, harm to essential functions from ocean acidification and ocean warming, overharvest for the aquarium trade, and inadequacy of regulatory mechanisms) are cumulatively or synergistically likely to interact and result in significant impacts to the species, either now or in the foreseeable future. We have no information to suggest that the identified threats to the species will work synergistically, thereby enhancing impacts to the six petitioned species populations. With regard to cumulative impacts, we must consider whether the information provided would suggest that the additive impacts from the various threats indicate that the species may warrant protection under the ESA. Because of the expansive ranges of the petitioned species and the non-uniform nature of the potential future threats we do not expect the petitioned species to be exposed to all threats simultaneously throughout all or a significant portion of their ranges. Additionally, in places where they experience multiple threats simultaneously, e.g., coral bleaching impacts combined with harvest, impacts are likely to be localized. The lack of any evidence of declining populations is true for all six species.

In summary, we cannot reasonably infer that studies referenced in the petition showing localized declines or generalized threats may describe an extinction risk of these widely-distributed and abundant species. Overall, the petitioner presented insufficient information to suggest the global population of any of these six petitioned species is so depressed or declining due to any of the threats identified in the petition such that it may require ESA listing. Based on the lack of population-level impacts identified in the petition and the information in our files, we cannot reasonably infer that the combined effects of these threats will occur with such frequency, intensity, or geographic scope as to present an extinction risk to these six petitioned species.

Accordingly, we find that for the Hawaiian dascyllus (*Dascyllus albisella*), blue-eyed damselfish (*Plectroglyphidodon johnstonianus*), black-axil chromis (*Chromis atripectoralis*), blue-green damselfish (*Chromis viridis*), reticulated damselfish (*Dascyllus reticulatus*), and blackbar devil or Dick's damselfish (*Plectroglyphidodon dickii*), the petition does not present substantial scientific or commercial information indicating that ESA-listing may be warranted under any of the five section 4(a)(1) factors, alone or in combination.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, and based on the above analysis, we find that the petition presents substantial information indicating that the petitioned action may be warranted for the orange clownfish (*Amphiprion percula*). We will conduct a status review for this species to determine if the petitioned action is warranted. We find that the petition fails to present substantial scientific or commercial information indicating that the petitioned action may be warranted for the remaining six petitioned Indo-Pacific species: the Hawaiian dascyllus (*Dascyllus albisella*), reticulated damselfish (*Dascyllus reticulatus*), blue-eyed damselfish (*Plectroglyphidodon johnstonianus*), black-axil chromis (*Chromis atripectoralis*), blue-green damselfish (*Chromis viridis*), and blackbar devil or Dick's damselfish (*Plectroglyphidodon dickii*).

Information Solicited

To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to *A. percula* from any interested party. Specifically, we are soliciting information, including unpublished information, in the following areas: (1) Historical and current distribution and abundance of *A. percula* throughout its range; (2) historical and current population trends for *A. percula;* (3) life history and habitat requirements of *A. percula;* (4) genetics and population structure information (including morphology, ecology, behavior, etc) for populations of *A. percula;* (5) past, current, and future threats to *A. percula,* including any current or planned activities that may adversely impact the species; (6) ongoing or planned efforts to protect and restore *A. percula* and its habitat; and (7) management, regulatory, and enforcement information pertaining to *A. percula.* We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 28, 2014.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–20955 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140822715–4715–01]

RIN 0648–BE37

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery; 2015–2017 Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the commercial tilefish fishery for the 2015, 2016, and 2017 fishing years. This action would set the acceptable biological catch, annual catch limit, total allowable landings, and harvest allocations for the individual fishing quota and incidental fishery components of the commercial tilefish fishery. The intent of this action is to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and

Management Act and the Tilefish Fishery Management Plan.

DATES: Comments must be received by September 18, 2014.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0103, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0103,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Tilefish Specifications.''

Instructions: All comments received are part of the public record and will generally be posted to *www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment (EA) and Initial Regulatory Flexibility Analysis (IRFA) are available upon request from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The specifications document is also accessible via the Internet at: *www.greateratlantic.fisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978–281–9341.

SUPPLEMENTARY INFORMATION: Regulations implementing the Tilefish Fishery Management Plan (FMP) appear at 50 CFR part 648, subparts A and N. The FMP (section 1.2.1.2) states that, after a ''benchmark'' stock assessment, conducted at the Northeast Fisheries Science Center (NEFSC) sponsored stock assessment workshop (SAW), and subsequent review by the stock assessment review committee (SARC), from which the biological reference points for tilefish could change, a change to the quota may be warranted. The 58th SAW met in December 2013, assessed the tilefish stock using updated information and a new analytical model, and concluded that the stock is not overfished and overfishing is not occurring. Fishing mortality (F) was estimated to be 74 percent of the F that allows maximum sustainable yield (F_{MSY}). Spawning stock biomass (SSB) was estimated to be 101 percent of SSB_{MSY}. The stock assessment was reviewed and accepted by the SARC in January 2014. Based on the results of this assessment, NMFS has determined that the tilefish stock has been rebuilt.

The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) met in March 2014 to review the assessment results and other available scientific information and make recommendations for an overfishing limit (OFL) and acceptable biological catch (ABC) for up to a 3-year period. The SSC accepted the new stock assessment model, and identified the tilefish assessment as Level 3 under the Council's tiered ABC control rule structure. The previous stock assessment had been considered Level 4. The change in assessment level led the SSC to apply a different requirement of the Council's risk policy for setting ABC relative to the OFL. This change resulted in a lower recommended ABC, and therefore a lower harvest quota, than has been used in this fishery since 2001.

The Council's Tilefish Monitoring Committee met to consider the SSC's recommendations as well as additional information about the fishery, including recent average estimated discards of tilefish, to recommend annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) for the same 3-year time period. The Monitoring Committee recommended for each of the three years that the ACL and ACT be set equal to the ABC. In determining a recommended TAL, the Monitoring Committee incorporated a deduction of 5 mt from the ACT to account for discards of tilefish across all fisheries. This amount represents the recent average discards calculated from observer data.

The Council met on April 9, 2014, to consider the SSC's and Monitoring Committee's recommendations, receive public comments, and to formalize recommendations to NMFS for the 2015–2017 catch limit specifications, management measures, and research set-aside amounts. The Council's quota recommendations are listed in Table 1.

TABLE 1—CURRENT TILEFISH HARVEST LIMITS FOR 2014 RELATIVE TO PROPOSED SPECIFICATIONS FOR 2015, 2016, AND 2017

	2014	2015	2016	2017
Overfishing Limit (OFL)	NA	989 mt	1,063 mt	1,091 mt
Acceptable Biological Catch (ABC)	913 mt	801 mt	861 mt	861 mt
Annual Catch Limit (ACL)	913 mt	801 mt	861 mt	861 mt
Total Allowable Landings (TAL)	905 mt	796 mt	856 mt	856 mt
Individual Fishing Quota (IFQ) Fishery [1]	1,895,250 lb (859,671 kg).	1,667,136 lb (756,200 kg).	1,792,799 lb (813,200 kg).	1,792,799 lb (813,200 kg)
Incidental Fishery [1]	99,750 lb (45,246 kg).	87,744 lb (39,800 kg).	94,357 lb (42,800 kg).	94,357 lb (42,800 kg)

[1] Kg are converted from lb, and may not necessarily add exactly due to rounding.

The Council recommended the same quota for 2017 as proposed for 2016, because, even though stock assessment projections indicate that the quota could be increased slightly, the Tilefish FMP has used a constant landings management strategy since it was implemented in 2001. The tilefish industry has been supportive of this approach, and stated they benefit from the predictability that a stable quota provides. At the urging of the tilefish industry, and because the lower harvest in 2017 would likely support further growth in this stock, the Council decided that the value of quota stability between 2016 and 2017 outweighed the potential gain from the small amount of quota increase that could have been realized in 2017. As in previous years, the Council opted not to allocate any tilefish quota for research set-aside. If these recommended quotas are implemented, the Council would have

the opportunity to review updated information on the status of the tilefish fishery each year, and may choose to recommend changes to these specifications before the 2016 or 2017 fishing years.

The regulation at § 648.292(b)(1) specifies that the TAL for each fishing year will be 1.995 million lb (905,172 kg), unless modified by the specifications process. This default value in the regulations may become confusing, because this action is proposing different TALs for 2015, 2016, and 2017 that would not appear in the regulations. To avoid confusion this action would revise the regulations to remove this reference to a specific TAL value.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. A copy of the draft EA is available from the Federal e-Rulemaking portal *www.regulations.gov*. Type ''NOAA–NMFS–2014–0103'' in the Enter Keyword or ID field and click search. A copy of the EA is also available upon request from the Council (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the EA for this action and supplemented by information contained in the preamble of this proposed rule. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY of the proposed rule. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

The Small Business Administration (SBA) defines a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to $20.5 million for finfish businesses. A small business in the recreational fishery (i.e., party or charter vessel operations) is a firm with receipts of up to $7.5 million. The proposed measures regarding the 2015, 2016, and 2017 tilefish quotas could affect any vessel holding an active Federal permit for tilefish. Vessel permit data shows that in 2013 there were 1,827 vessels that held a valid commercial tilefish permit and 393 vessels held a valid party/charter tilefish permit. However, not all of those vessels are active participants in the fishery. According to dealer-reported landings data, 141 vessels landed tilefish in fishing year 2013. In addition, according to vessel trip report data, 25 party/charter vessels reported catching tilefish in 2013.

Some of the vessels with tilefish permits may be considered to be part of the same firm because they may have the same owners. Firms are classified as finfish or for-hire firms based on the activity from which they derive the most revenue. All of the party/charter firms fall within the definition of a small business according to the 2010–2012 average revenues; however some of these firms also landed tilefish commercially. If the contribution of tilefish commercial receipts is more than 50 percent of the total, the party/charter firm is considered a commercial operation. Using the $20.5 million cutoff for commercial finfish firms, there are 190 firms that are small and 4 that are large assuming average revenues for the 2010–2012 period. The majority of the permitted vessels readily fall within the definition of small business.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rule that may duplicate, overlap, or conflict with this proposed rule.

In general terms, the active tilefish fishery participants derive a small share of gross receipts from the tilefish fishery. However, for small entities generating on average $10,000 or more of their total revenues from tilefish revenues, a large number of the active participants generate a large share of gross receipts from the tilefish fishery. The category of small entities likely to be affected by the proposed actions is that of IFQ shareholders and fishermen in the commercial fishery. The overall commercial tilefish quota is allocated to IFQ shareholders, which are allocated 95 percent of the overall quota and incidental fishery vessels which are allocated 5 percent of the overall quota. IFQ vessels directly target tilefish using bottom longline gear, and incidental vessels land tilefish incidentally when targeting other species. Most of the incidental landings occur with bottom trawl gear. However, for the incidental fishery, changes in quotas are not expected to affect the effort of vessels that land tilefish incidentally (e.g., otter trawl vessels) as the catch and/or landings of tilefish incidentally occur as these vessels target other species and their fishing behavior is not expected to be driven by the level of the incidental tilefish quota.

The IRFA addressed three alternatives (including a no action/status quo alternative) for the 2015, 2016, and 2017 tilefish fishing years. All quota alternatives considered in this analysis are based on various commercial harvest levels for tilefish. Procedurally, the economic effects of the quota alternatives were estimated using four steps. First, the dealer-reported landings data were queried to identify all vessels that landed at least one pound of tilefish in fishing year 2013 (November 1, 2012—October 31, 2013). The second step was to estimate total revenues from all species landed by each vessel during fishing year 2013. This estimate provides the basis from which subsequent quota changes and their associated effects on vessel revenues were compared.

The third step was to deduct or add, as appropriate, the expected change in vessel revenues depending upon which of the quota scenarios were evaluated. This was accomplished by estimating proportional reductions or increases in the quota scenarios for 2015 versus the base quota year 2013. For 2016 and 2017, proportional reductions between the 2016–2017 measures and the status quo (no action) alternative for 2016–2017 were used to assess revenue changes. For the purpose of estimating the 2015, 2016, and 2017 quotas and revenue changes, the following assumptions were made: (a) The industry will fully harvest, and not exceed, the 2014 quota; and (b) the entire tilefish quota allocations will be taken in 2015, 2016, and 2017. The fourth step was to compare the estimated 2015, 2016, and 2017 base revenues for every vessel to assess potential changes.

The proposed action (Alternative 1) would set commercial tilefish quotas for 2015, 2016, and 2017 at 1.755 million lb (796 mt), 1.887 million lb (856 mt), and 1.887 million lb (856 mt), respectively. Under Alternative 1 for 2015–2017, it is expected that the number of vessels impacted by revenue losses on the order of 5 percent or less (relative to the status quo) would range from 134 (in year 2015) to 138 (in each year 2016 and 2017). In addition, it is expected that that the number of vessels impacted by revenue losses on the order of 5 percent

or more would range from 7 (in year 2015) to 3 (in each year 2016 and 2017). All vessels with revenue reduction of 5 percent or greater are from New Jersey and/or New York, with the largest number of impacted vessels homeported in Suffolk County, NY.

Overall, it is expected that Alternative 1 for 2015–2017 would result in a combined decrease in revenue of $1,567,979 relative to the status quo quota for 2015–2017. Because the overall dependence on tilefish for most of the vessels projected to incur revenue losses is small (83 to 97 percent of the vessels), it is expected that the potential decrease in revenue stated above would more greatly affect the 11 vessels that are more dependent on tilefish (i.e., IFQ vessels) than the vessels that incidentally catch tilefish. On average, each IFQ vessel that landed tilefish during fishing year 2013 (11 vessels) would incur a total reduction in revenues of $135,416 under Alternative 1 over the 3-year period, when compared to the status quo alternative for 2015–2017; and each incidental vessel (130 vessels) would incur a $603 reduction in revenues over the same 3-year period.

Alternative 2 is the status quo alternative, and contains commercial quotas of 1.995 million lb (905 mt) for tilefish for each 2015, 2016, and 2017. Under this alternative, the tilefish specifications would result in no change in commercial landings when compared to current conditions. Therefore, commercial landings for tilefish would be expected to be the same relative to 2014 quota. As such, it is not expected that revenue changes would occur under this alternative when compared to existing conditions.

Alternative 3 would set commercial tilefish quotas for 2015, 2016, and 2017 at 1.755 million lb (796 mt), 1.887 million lb (856 mt), and 1.938 million lb (879 mt), respectively. Under Alternative 3 for 2015–2017, it is expected that the number of vessels impacted by revenue losses on the order of 5 percent or less (relative to the status quo) would range from 138 (in year 2016) to 141 (in 2017). In addition, it is expected that that the number of vessels impacted by revenue losses on the order of 5 percent or more would range from 7 (in year 2015) to 3 (in year 2016; no vessels were projected to incur revenue losses of 5 percent or more in 2017). All vessels with revenue reduction of 5 percent or greater are from New Jersey and/or New York, with the largest number of impacted vessels homeported in Suffolk County, NY.

Overall, it is expected that Alternative 3 for 2015–2017 would result in a combined decrease in revenue of $1,393,547 relative to the status quo quota for 2015–2017. Because the overall dependence on tilefish for most of the vessels projected to incur revenue losses is small, it is expected that the potential decrease in revenue stated above would more greatly affect the 11 vessels that are more dependent on tilefish (i.e., IFQ vessels) than the vessels that incidentally catch tilefish. On average, each IFQ vessel that landed tilefish during fishing year 2013 (11 vessels) would incur a total reduction in revenues of $120,352 under Alternative 3 over the 3-year period, when compared to the status quo alternative for 2015–2017; and each incidental vessel (130 vessels) would incur a $536 reduction in revenues over the same 3-year period.

For both Alternative 1 and Alternative 3 projected changes in ex-vessel gross revenues associated with the quotas in 2015–2017 relative to the status quo are based on assumed static prices for tilefish. However, it is possible that given the potential decrease in landings for tilefish, the price for this species may increase, holding all other factors constant. If this occurs, an increase in the price for tilefish may mitigate some of the revenue losses associated with lower quantity of tilefish quota availability.

The Council recommended Alternative 1 for 2015, 2016, and 2017, over Alternatives 2 and 3 because it is projected to prevent overfishing in 2015 and 2016, while allowing quota stability between 2016 and 2017, which the tilefish industry considers important in order to promote stability in price and supply in the marketplace. Alternative 2 was not recommended by the Council because it would exceed the catch level recommendations of the Council's SSC, and would therefore be inconsistent with the requirements of the Magnuson-Stevens Act. Alternative 3 was not selected because it would not support the consistency of quota/landings from year to year that the tilefish industry considers important to maintaining price and supply stability in this fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 27, 2014.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.292, revise paragraph (b) to read as follows:

§ 648.292 Tilefish specifications.

* * * * *

(b) *TAL.* (1) The TAL for each fishing year will be specified pursuant to paragraph (a) of this section.

(2) The sum of the TAL and the estimated discards shall be less than or equal to the ACT.

* * * * *

[FR Doc. 2014–20963 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 79, No. 170
Wednesday, September 3, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 27, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 3, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: Application Package and Reporting Requirements for the Veterinary Medicine Loan Repayment Program (VMLRP).

OMB Control Number: 0524–0047.

Summary of Collection: In January 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1997. This law established a new Veterinary Medicine Loan Repayment Program (VMLRP) (7 U.S.C. 3151a) authorizing the Secretary of Agriculture to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. The purpose of the program is to assure an adequate supply of trained food animal veterinarians in shortage situations and provide USDA with a pool of veterinary specialists to assist in the control and eradication of animal disease outbreaks.

Need and Use of the Information: The information collected allows the National Institute of Food and Agriculture to request from VMLRP applicants' information related to eligibility, qualification, career interests, and recommendations necessary to evaluate their applications for repayment of educational indebtedness in return for agreeing to provide veterinary services in veterinarian shortage situations. The information will also be used to determine an applicant's eligibility for participation in the program.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 600.

Frequency of Responses: Reporting: Biennially.

Total Burden Hours: 1,350.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–20828 Filed 9–2–14; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–14–0067]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Agricultural Marketing Service (AMS) is announcing a meeting of the Fruit and Vegetable Industry Advisory Committee (Committee). The meeting is being convened to examine the full spectrum of fruit and vegetable issues and provide recommendations and ideas to the Secretary of Agriculture on how the U.S. Department of Agriculture (USDA) can tailor programs and services to better meet the needs of the U.S. produce industry. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Monday, September 29, 2014, from 8:30 a.m. to 5:00 p.m., and Tuesday, September 30, 2014, from 8:30 a.m. to 1:00 p.m.

ADDRESSES: The Committee meeting will be held at the Hyatt Regency Crystal City Hotel, at 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, Acting Designated Federal Official, USDA, AMS, Fruit and Vegetable Program; Telephone: (202) 720–3334; Email: *Marlene.betts@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA)(5 U.S.C. App.), the Secretary of Agriculture (Secretary) established the Committee in 2001, to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs. The Committee was re-chartered in July 2013, for a two-year period.

A notice soliciting nominations was published in the **Federal Register** on November 25, 2013 (78 FR 70259). The Secretary appointed members to the Committee in July 2014. Each member serves either a two or three-year term,

and no member shall serve more than six consecutive years on the Committee. AMS oversees the Committee to ensure that it is administered according to the FACA.

AMS Deputy Administrator for the Fruit and Vegetable Program, Charles Parrott, serves as the Committee's Executive Secretary. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are called upon to participate in the Committee's meetings as determined by the Committee. AMS is giving notice of the Committee meeting to the public so that they may attend and present their recommendations. The meeting is open to the public. Reference to dates and addresses section for the time and place of the meeting.

Agenda items will include, but are not limited to, welcome and introductions, administrative matters, selection of Committee Chairman and Vice-Chairman, and discussions by the Committee on the full spectrum of issues facing the fruit and vegetable industry. The Committee will determine the areas that they would like to address concerning the Department's programs.

Public Comments: Those parties that would like to speak at the meeting should register on or before September 19, 2014. To register as a speaker, please email your name and all of the names of people planning to give oral comments, the organizations or interests represented, business addresses, email addresses, and telephone numbers to Ms. Marlene Betts, Acting Designated Federal Officer (DFO) at: *Marlene.betts@ams.usda.gov* or telephone at (202) 720–3334. Speakers who have registered in advance will be given priority. Written public comments may be submitted electronically by September 19, 2014, for the Committee's consideration to *www.regulations.gov* or mail to: 1400 Independence Avenue SW., Room 2077–South, STOP 0235, Washington, DC 20250–0235. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

Meeting Accommodations: The meeting hotel is ADA compliant, and the USDA provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify Marlene Betts at *marlene.betts@ams.usda.gov* or (202) 720–3334. Determinations for reasonable accommodations will be made on a case-by-case basis.

Dated: August 27, 2014.

Rex A. Barnes,

Associate Administrator.

[FR Doc. 2014–20833 Filed 9–2–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Generic Information Collection Clearance for STEW–MAP, the Stewardship Mapping and Assessment Project

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection *Generic Information Collection Clearance for STEW–MAP, the Stewardship Mapping and Assessment Project.*

DATES: Comments must be received in writing on or before November 3, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Lynne Westphal, USDA Forest Service, 1033 University Place, Suite 360, Evanston, IL 60201.

Comments also may be submitted via facsimile to 847–866–9506 or by email to *lwestphal@fs.fed.us.* Please put ''Comments re: STEW–MAP'' in the subject line.

Comments submitted in response to this notice may be made available to the public through relevant Web sites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at USDA Forest Service, 1033 University Place, Suite 360, Evanston, IL during normal business hours. Visitors are encouraged to call ahead to 847–866–9311 to facilitate entry to the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to *lwestphal@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynne Westphal at 847–866–9311 extension 11. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Generic Information Collection Clearance for STEW–MAP, the Stewardship Mapping and Assessment Project.

OMB Number: 0596—NEW.

Type of Request: New.

Abstract: Local environmental stewardship groups are essential for ensuring the vibrancy of natural areas in urban environments. Urban natural areas provide a range of benefits and services including stormwater management, air pollution removal, urban heat island mitigation, carbon storage, wildlife habitat, recreation opportunities, stress reduction, aesthetic beauty, noise reduction, increased property values, and reduced energy use. The work of civic environmental stewards leverages the efforts of local government officials in maintaining these resources, especially in lean budget times. Civic stewardship organizations, including nonprofits, faith-based groups, formal and informal community groups, and coalitions, are often involved in, for example, planting trees, organizing community gardens, offering environment-themed classes, engaging with local officials on behalf of the environment, monitoring plants or animals, and cleaning up nearby parks or natural areas. People who do this work are stewards of their local environments, even if they do not normally use the word ''steward'' or think of what they do as ''stewardship.''

In urban areas, the roles of civic environmental stewards and their levels of engagement and commitment are often not understood by land managers and other decision makers. This means that the valuable services they provide are not appreciated and built on to full advantage. In addition, stewards themselves may not be aware of others doing similar work in their area so there may be lost opportunities for collaboration between groups.

The purpose of this research is to gather information on civic stewardship groups and their efforts such as where

they work, the types of projects they focus on, how they are organize. This information will be summarize and made publicly available online for use by policy makers, land managers, environmental professionals, the general public, stewards themselves, and other urban resource management stakeholders.

There are three phases to a STEW–MAP project:

- Phase One (Census) is a census of stewardship groups in the target city or region, essentially putting together a master list of known stewardship groups and their contact information.
- Phase Two (Survey) is a survey which is distributed to all of the organizations identified in Phase One to collect information about what they work on, how their group is structured, where they work, and what other groups they collaborate with.
- Phase Three (Follow-Up Interviews) is follow-up interviews with key longstanding organizations identified during Phase Two to collect more detailed information about their organizational histories.

A primary goal of STEW–MAP is to visualize stewardship activities across the urban landscape. The geographic information provided by stewardship groups on the survey (Phase Two) will allow the researchers to do a spatial analysis of where stewardship groups are working, identify ''gaps'' where little to no stewardship is being done, and provide locally relevant geographic information like what kinds of stewardship groups are working in particular places. This geographic information will be displayed on maps to show stewards, local land managers, policy makers, and other interested stakeholders how stewardship work is distributed across the region with the goal of encouraging collaboration, building innovative partnerships, increasing organizational capacities, and generally making stewardship efforts more effective.

All of the information from STEW–MAP will help planners, natural resource decision makers, land managers, and the general public work across property jurisdictions, management regimes and political boundaries to conserve, protect, and manage urban natural resources effectively. It will also be used to enhance local resource management efforts by helping public officials, land managers, and civic stewards connect to local stewardship groups.

STEW–MAP is being led by researchers from the Forest Service in partnership with researchers from universities and nongovernment organizations. The exact makeup of the research team will vary from location to location where STEW–MAP is conducted. The Forest Service, Research and Development branch is authorized to conduct basic scientific research to improve the health of forests and rangelands involving State, Federal, Tribal agencies, and private landowners across multiple jurisdictions including in urban areas. The study is aligned with the U.S. Department of Agriculture policy of an ''all-lands approach'' to resource management, which ''requires land managers to work across jurisdictions and land-use types, viewing forests landscapes as an integrated whole, both ecologically and socially'' (National Report on Sustainable Forests, 2010). This all-lands approach applies to urban ecosystems as well. Our project goals are consistent with the Forest Service, Urban and Community Forestry (UCF) program, which focus on urban forest ecosystems and the role of stewardship and trail connections to parks and public lands that promote health and sustainability for urban residents. This study seeks to identify opportunities for stewardship organizations to better collaborate and, thus, be more effective in the stewardship of urban natural areas.

Due to local geographical and/or cultural differences, and to meet the needs of any particular collaborative effort, we anticipate that there may be changes to the survey and interview questions and perhaps in methodology to accommodate the unique requirements of individual communities; therefore, we are submitting this request for a Generic Information Collection Clearance for the information collection activities associated with the STEW–MAP program in order to afford us the flexibility of tailoring the information collection activities and instruments to each location, and to apply lessons learned from previous STEW–MAP efforts and locations to future efforts and locations.

Affected Public: Representatives from civic environmental stewardship groups, and from State, local, or Tribal Governments.

Estimate of Burden per Response: 15 to 60 minutes.

Estimated Annual Number of Respondents:

Phase One (Census): 600
Phase Two (Survey): 15,000
Phase Three (Follow-up Interviews): 300

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7,925 hours.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: August 26, 2014.

Jimmy L. Reaves,

Deputy Chief, Research & Development.

[FR Doc. 2014–20864 Filed 9–2–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet in Sandy, Oregon. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. Additional information concerning the Committee, can be found by visiting the Committee's Web site at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.*

DATES: The meeting will be held September 30, 2014 at 10:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person

listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Mt. Hood National Forest Headquarters Office, 16400 Champion Way, Sandy, Oregon. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mt. Hood National Forest Headquarters Office. Please call ahead for directions and to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Connie Athman, Designated Federal Offical, by phone at (503) 668–1672 or via email at *cathman@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to experience a field trip review of projects authorized under Title II of the Act.

The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing within 7 days of the meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Connie Athman, Mt. Hood National Forest, 16400 Champion Way, Sandy, Oregon 97055; by email to *cathman@fs.fed.us,* or via facsimile to (503) 668–1413. Summary/minutes of the meeting will be posted on the Web site listed above within 45 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 25, 2014.

Sharon Wallace,

Acting Forest Supervisor.

[FR Doc. 2014–20899 Filed 9–2–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–60–2014]

Foreign-Trade Zone 286—Caledonia, Essex and Orleans Counties, Vermont Application for Reorganization (Expansion of Service Area) Under the Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Northeastern Vermont Development Association, grantee of FTZ 286, requesting authority to expand its service area under the alternative site framework (ASF) adopted by the Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S. C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on August 27, 2014.

FTZ 286 was approved by the Board on March 22, 2013 (Board Order 1890, 78 FR 20295–20296, 04–04–2013). The zone currently has a service area that includes the Counties of Caledonia, Essex and Orleans Counties.

The applicant is requesting authority to expand the service area of the zone to include Lamoille County, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Derby Line Customs and Border Protection port of entry.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board. Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 3, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 17, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room''section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: August 28, 2014.

Andrew McGilvray.

Executive Secretary.

[FR Doc. 2014–20987 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Notice of Rescission of Antidumping Duty Administrative Review

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 preserved mushrooms (mushrooms) from India for the period February 1, 2013, through January 31, 2014 (POR).

DATES: *Effective* September 3, 2014.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or 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) 482–4929 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2014, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on mushrooms from India for the POR.[1]

On February 28, 2014, 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

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 79 FR 6159 (February 3, 2014).

timely requests from Monterey Mushrooms Inc. and Sunny Dell Foods Inc., (the petitioners), to conduct an administrative review of the sales of Agro Dutch Industries Limited (Agro Dutch); Himalya International Ltd. (Himalya); Hindustan Lever Ltd. (formerly Ponds India, Ltd.) (Hindustan); Transchem Ltd. (Transchem); and Weikfield Foods Pvt. Ltd (Weikfield).

On April 1, 2014, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on mushrooms from India with respect to the above-named companies.[2]

The Department stated in its initiation of this review that it intended to rely on U.S. Customs and Border Protection (CBP) data to select respondents.[3] However, our review of the CBP database, with respect to the companies for which reviews were requested, showed no entries of mushrooms originating in India, subject to antidumping duties and countervailing duties (AD/CVD), during the POR.[4]

On April 4, 2014, we sent a ''No Shipments Inquiry'' to CBP to confirm that there were no shipments or entries of mushrooms from India during the POR from the companies subject to review. We received no information from CBP to contradict the results of our data query.

On April 17, 2014, we received a no shipment claim for the POR from Weikfield.

On May 21, 2014, Sunny Dell Food Inc. timely withdrew its request for a review of all five companies named above. On June 3, 2014, Monterey Mushrooms timely withdrew its request for a review of Agro Dutch, Hindustan, Transchem and Weikfield.

On June 6, 2014, Monterey Mushrooms placed on the record shipment manifest data that suggested that Himalya may have exported subject merchandise to the United States during the POR. Monterey Mushrooms requested that the Department work with CBP to determine whether Himalya, in fact, exported subject merchandise to the United States during the POR and, if appropriate, to conduct a review of Himalya's POR shipments

On June 30, 2014, we rescinded the review, in part, with respect to Agro Dutch, Hindustan, Transchem, and Weikfield.[5]

On August 12, 2014, we issued a memorandum stating that because the CBP data query showed there are no suspended entries from Himalya subject to this review upon which to assess duties, we intend to rescind this review.[6] Also on August 12, 2014, consistent with this memorandum, we referred to CBP the matter raised in Monterey Mushrooms' June 6, 2014, submission.[7] We invited parties to comment on our intent to rescind this administrative review. We did not receive comments from any interested party.

Rescission of Review

It is the Department's practice to rescind an administrative review pursuant to 19 CFR 351.213(d)(3) when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[8] At the end of the administrative review, the suspended entries are liquidated at the assessment rate computed for the review period.[9] Therefore, for an administrative review to be conducted there must be a reviewable, suspended entry to be liquidated at the newly calculated assessment rate. Because the CBP data query showed there are no suspended entries from the company subject to this review upon which to assess duties, we are rescinding this review of the antidumping duty order on mushrooms from India pursuant to 19 CFR 351.213(d)(3). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice.

Notifications

This notice serves as a final reminder to importers for whom this review is being rescinded 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with section 751 of the Act, and 19 CFR 351.213(d)(4).

Dated: August 27, 2014.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–20985 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 18262 (April 1, 2014) (*Initiation Notice*).

[3] *See Initiation Notice.*

[4] *See* April 1, 2014, Memorandum to the File entitled ''Release of Customs and Border Protection (CBP) Data.''

[5] *See Certain Preserved Mushrooms from India: Partial Rescission of Antidumping Duty Administrative Review; 2013–2014,* 79 FR 36720 (June 30, 2014).

[6] *See* August 12, 2014, Memorandum to James Maeder, Director, Office II, AD/CVD Operations, entitled ''Intent to Rescind Administrative Review.''

[7] *See* August 12, 2014, Letter from James Maeder, Director, Office II, Antidumping/Countervailing Duty Operations, Enforcement and Compliance, to Cynthia Whittenburg, Executive Director, Office of International Trade, CBP.

[8] *See, e.g., Certain Frozen Warmwater Shrimp From Brazil: Notice of Rescission of Antidumping Duty Administrative Review,* 77 FR 32498 (June 1, 2012); and *Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 21634 (May 1, 2002), unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 67 FR 66110 (October 30, 2002).

[9] *See* 19 CFR 351.212(b)(1). *See also* section 751(a)(2)(A) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–944]

Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of the countervailing duty order on certain oil country tubular goods (OCTG) from the People's Republic of China (PRC). On February 25, 2014, the Department published the Preliminary Results for this administrative review.[1] The period of review (POR) is January 1, 2012,

[1] *See Certain Oil Country Tubular Goods From the People's Republic of China: Partial Rescission and Preliminary Results of Countervailing Duty Administrative Review; 2012,* 79 FR 10475 (Feb. 25, 2014).

through December 31, 2012. We find that Wuxi Seamless Oil Pipe Co., Ltd. (Wuxi) and Jiangsu Chengde Steel Tube Share Co., Ltd. (Jiangsu Chengde) received countervailable subsidies during the POR.

DATES: *Effective* September 3, 2014.

FOR FURTHER INFORMATION CONTACT: Christopher Siepmann, Sergio Balbontin, or Joseph Shuler AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7958, (202) 482–6478, or (202) 482–1293 respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of the order consists of OCTG. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

A full description of the scope of the *OCTG Order* is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Final Results of Countervailing Duty Administrative Review: Certain Oil Country Tubular Goods from the People's Republic of China,'' dated August 25, 2014 (Decision Memorandum), which is hereby adopted by this notice.

The Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Analysis of Comments Received

All issues raised in parties' briefs are addressed in the Decision Memorandum. A list of the issues raised is attached to this notice as an appendix.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, including our decision to apply facts otherwise available with an adverse inference, *see* Decision Memorandum.

Final Results of the Review

As a result of this review, we determine a net subsidy rate of 59.29 percent for Wuxi and a net subsidy rate of 1.49 percent for Jiangsu Chengde for the period January 1, 2012, through December 31, 2012.

Producer/Exporter	Net subsidy rate (percent)
Wuxi Seamless Oil Pipe Co., Ltd.; Bazhou Seamless Oil Pipes Co. Ltd.; Liaoyang Seamless Oil Pipes Co. Ltd.; Mengfeng Special Steel Co. Ltd.; Songyuan Seamless Oil Pipes Co. Ltd	59.29
Jiangsu Chengde Steel Tube Share Co., Ltd	1.49

Assessment Rates

Upon issuance of these final results, the United States Customs and Border Protection (CBP) shall assess countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of these final results.

Cash Deposit Requirements

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount listed above on shipments of subject merchandise by Wuxi or Jiangsu Chengde entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by the order, but not examined in this review, are those established in the most recently completed segment of the proceeding for each company.[2] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a 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

[2] *See OCTG Order.*

written notification of 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 administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: August 25, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Decision Memorandum:

1. Scope of the Order
2. Use of Facts Otherwise Available and Adverse Inferences
3. Subsidies Valuation Information
4. Analysis of Programs
5. Analysis of Comments

Comments

A. Application of the CVD Law

Comment 1: Application of CVDs to Imports from NME Countries

Comment 2: Simultaneous Application of CVD and AD NME Measures

B. New Subsidy Allegation Programs

Comment 3: Application of AFA for WSP's Failure to Respond to Questionnaires Regarding New Subsidy Allegation Programs and Uncreditworthiness

Comment 4: Whether the Department Should Have Investigated the Program ''Preferential Financial Support to Bazhou Seamless''

C. Provision of Electricity for LTAR

Comment 5: Whether the Provision of Electricity for LTAR is Countervailable

D. Provision of Steel Rounds for LTAR

Comment 6: Whether Majority State-Owned Producers of Steel Rounds are ''Authorities''

Comment 7: Relevance of CCP Affiliations to Whether a Company is a GOC ''Authority''

Comment 8: Sufficiency of Record Information for ''Authorities'' Analysis

Comment 9: Whether the Provision of Steel Rounds for LTAR is Specific

Comment 10: Benchmark Issues

E. Policy Lending

Comment 11: Whether Loans to the Respondents Are Specific

Comment 12: Whether a Financial Contribution Exists and SOCBs are Authorities

Comment 13: Use of an In-Country or External Loan Benchmark

Comment 14: Whether the Department Should Have Accepted WSP's Untimely-Filed Loans

Comment 15: The Appropriate AFA Rate for WSP's Policy Loans

[FR Doc. 2014–20984 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–815]

Certain Oil Country Tubular Goods From Ukraine: Amended Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is amending the final determination of sales at less than fair value in the antidumping duty investigation of certain oil country tubular goods (OCTG) from Ukraine covering the period of investigation (POI) July 1, 2012, through June 30, 2013. For information on the amended weighted-average dumping margins, see the ''Amended Final Determination'' section of this notice.

DATES: *Effective Date:* September 3, 2014.

FOR FURTHER INFORMATION CONTACT: David Lindgren, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3870.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2014, the Department published in the **Federal Register** its final determination in this investigation.[1] Prior to that, on July 14, 2014, the Department disclosed to interested parties its calculations for the final determination in accordance with 19 CFR 351.224(b). Subsequently, on July 21, 2014, United States Steel Corporation, a petitioner in the investigation, filed a timely allegation that the Department committed a ministerial error related to certain U.S. sales made by Interpipe Europe S.A.; Interpipe Ukraine LLC; PJSC Interpipe Niznedneprovsky Tube Rolling Plant (aka Interpipe NTRP); LLC Interpipe Niko Tube; and, North American Interpipe Inc. (collectively, Interpipe) during the POI.[2] No additional allegations or comments were filed by any other interested party.

As noted in the *Final Determination,* on July 10, 2014, the Department signed a suspension agreement with Interpipe.[3] The Department continued and completed this investigation pursuant to the requests for continuation in accordance with section 734(g) of the Tariff Act of 1930, as amended (the Act).[4]

Scope of the Investigation

The merchandise covered by the investigation is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock. For a complete description of the scope of the investigation, *see* the Appendix to this notice.

Ministerial Error

The Department's regulations at 19 CFR 351.224(f) defines a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' [5] After analyzing the ministerial error allegation, we determine, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that a ministerial error was made in the *Final Determination.* For a detailed discussion of this ministerial error, *see* the Ministerial Error Memorandum.[6]

[1] *See Certain Oil Country Tubular Goods From Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 79 FR 41969 (July 18, 2014) (*Final Determination*).

[2] *See* Letter to the Department from United States Steel Corporation regarding ''Oil Country Tubular Goods from Ukraine,'' dated July 21, 2014 (Ministerial Error Allegation).

[3] *See Final Determination,* 79 FR at 41970; *see also Suspension of Antidumping Investigation: Certain Oil Country Tubular Goods From Ukraine,* 79 FR 41959 (July 18, 2014) (*Suspension Agreement*).

[4] *Id.*

[5] *See also* section 735(e) of the Act.

[6] Memorandum To Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, Through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, From Edward C. Yang, Director, Office VII, Antidumping and Countervailing Duty Operations: ''Amended Final Affirmative Determination in the Less Than Fair Value Investigation of Certain Oil Country Tubular Goods from Ukraine: Ministerial Error Allegation,''

Continued

The amended final weighted-average dumping margins are listed in the ''Amended Final Determination'' section below.

Amended Final Determination

In accordance with 19 CFR 351.224(e), we are amending the final affirmative determination of sales at less than fair value by revising the weight-averaged dumping margin calculated for Interpipe. Furthermore, because the all-others rate was derived entirely from Interpipe's margin,[7] we also are amending the ''all-others'' rate.

We determine the revised weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Interpipe Europe S.A.; Interpipe Ukraine LLC; PJSC Interpipe Niznedneprovsky Tube Rolling Plant (aka Interpipe NTRP); LLC Interpipe Niko Tube	7.47
All-Others	7.47

Terminated Suspension of Liquidation

In light of the *Suspension Agreement,* in accordance with section 734(f)(2)(A) of the Act, we terminated the suspension of liquidation of entries of OCTG from Ukraine and stated that any cash deposits for such entries posted pursuant to section 733(d)(1)(B) of the Act shall be refunded.[8] The suspension of liquidation remains terminated in accordance with section 734(f)(2)(A) of the Act notwithstanding these amended final results.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended final determination.

We are issuing and publishing this determination and notice pursuant to sections 735(d), 735(e), and 777(i) of the Act.

Dated: August 26, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The merchandise covered by the investigation is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock.

Excluded from the scope of the investigation are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2014–20975 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–DS–P

dated August 12, 2014 (Ministerial Error Memorandum).

[7] *See Final Determination,* 79 FR at 41970.

[8] *Id.,* 79 FR at 41959, 41960.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Institute of Standards and Technology Performance Review Board Membership

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice lists the membership of the National Institute of Standards and Technology Performance Review Board (NIST PRB) and supersedes the list published on August 30, 2013.

DATES: The changes to the NIST PRB membership list announced in this notice are effective on September 3, 2014.

FOR FURTHER INFORMATION CONTACT: Didi Hanlein at the National Institute of Standards and Technology, (301) 975–3000 or by email at *desiree.hanlein@nist.gov.*

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology Performance Review Board (NIST PRB or Board) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the NIST PRB and supersedes the list published in the **Federal Register** on August 30, 2013 (78 FR 53729).

NIST PRB Members

Richard Cavanagh (C) (alternate),
Director, Special Programs Office,

National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/15.
Richard Kayser, Jr. (C), Chief Safety Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/16.
Kevin Kimball (C) (alternate), Chief of Staff, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/15.
Laurie Locascio (C), Director, Material Measurement Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/15.
James Olthoff (C) (alternate), Deputy Director for Measurement Services, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/15.
Angela Simpson (NC), Deputy Assistant Secretary, National Telecommunications & Information Administration, Department of Commerce, Washington, DC 20230, Appointment Expires: 12/31/16.
Maureen Wylie (C), Chief Financial Officer, United States Nuclear Regulatory Commission, Washington, DC 20555, Appointment Expires: 12/31/15.

Dated: August 26, 2014.

Mary H. Saunders,

Associate Director for Management Resources.

[FR Doc. 2014–20983 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–13P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD455

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in October, November, and December of 2014. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2015 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on October 9, November 6, and December 4, 2014.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on October 14, October 16, November 18, November 19, December 10, and December 17, 2014.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Boston, MA; Mount Pleasant, SC; and Clearwater, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Warwick, RI; Key Largo, FL; Kitty Hawk, NC; Palm Coast, FL; Kenner, LA; and Ronkonkoma, NY.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 101 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. October 9, 2014, 12 p.m.–4 p.m., Hampton Inn & Suites, 811 Massachusetts Avenue, Boston, MA 02118.

2. November 6, 2014, 12 p.m.–4 p.m., Hampton Inn & Suites, 1104 Isle of Palms Connector, Mount Pleasant, SC 29464.

3. December 4, 2014, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 5000 Lake Boulevard, Clearwater, FL 33760.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer

reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 184 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. October 14, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886.
2. October 16, 2014, 9 a.m.–5 p.m., Holiday Inn, 99701 Overseas Highway, Key Largo, FL 33037.
3. November 18, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949.
4. November 19, 2014, 9 a.m.–5 p.m., Hilton Garden Inn, 55 Town Center Boulevard, Palm Coast, FL 32164.
5. December 10, 2014, 9 a.m.–5 p.m., Hilton Hotel, 901 Airline Drive, Kenner, LA 70062.
6. December 17, 2014, 9 a.m.–5 p.m., Clarion Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

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

Dated: August 28, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–20916 Filed 9–2–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Comprehensive Review of the Military Justice System; Revision

AGENCY: Department of Defense.

ACTION: Notice; revision.

SUMMARY: On May 19, 2014 (79 FR 28688–28689), the Department of Defense published a notice titled ''Comprehensive Review of the Military Justice System.'' Subsequent to the publication of that notice, the Department extended the deadline for the Military Justice Review Group (MJRG) reports recommending changes to the Uniform Code of Military Justice (UCMJ) and the Manual for Courts-Martial (MCM). This notice is being published with revisions to the notice of May 19, 2014. The deadline for the MJRG report recommending changes to the UCMJ has been extended to March 25, 2015, and the deadline for the report recommending changes to the MCM has been extended to September 21, 2015.

ADDRESSES: You may forward submissions by either of the following methods:

- *E-Mail: OSD.UCMJ@mail.mil.*
- *Mail:* Military Justice Review, Room 3B747, 1600 Defense Pentagon, Washington, DC 20301–1600.

Web site: http://www.dod.mil/dodgc/mjrg.html.

FOR FURTHER INFORMATION CONTACT: Mr. William Sprance, DoD Office of the General Counsel, 1600 Defense Pentagon, Washington DC 20301–1600; (703) 571–9457.

SUPPLEMENTARY INFORMATION:

Submissions: The General Counsel invites members of the public to suggest areas for review by the MJRG concerning both substantive military law and military justice procedures, and to submit specific proposals to amend the UCMJ and the MCM. Please provide supporting rationale for any proposals. Submissions are requested as soon as possible to facilitate consideration within the timeframe established by the revised deadlines.

Comments submitted via email should be in one of the following formats: Adobe Acrobat or Microsoft Word. Materials received will not be returned, and any comments or submission received may become available to the public.

Dated: August 27, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–20844 Filed 9–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Revision to Military Freight Traffic Unified Rules Publication (MFTURP) NO. 1, Section F, Air Transportation Service Provider Rules and Domestic Air Tender Freight Carrier Registration Program (FCRP)

AGENCY: Department of the Air Force, Department of Defense.

SUMMARY: Air Mobility Command (AMC) is providing notice that it intends to change Domestic Air Tender policy within the MFTURP NO. 1 to restrict registration in the FCRP for Domestic Air Tenders to Civil Reserve Air Fleet (CRAF) Transportation Service Providers (TSP) only. CRAF TSPs may, if they choose to, act through a freight forwarder, logistics company, or broker. This change only affects domestic air tender TSPs such as airlines, logistics companies, freight forwarders, and brokers. The purpose of the new policy is to strengthen the CRAF program in support of the national defense airlift objectives to ensure military and civil airlift resources are capable of meeting the defense mobilization and deployment requirements supporting U.S. Defense & Foreign Policy.

DATES: Comments must be received by HQ AMC/A4TC NLT (30) days after the post date.

ADDRESSES: Submit comments to Air Mobility Command, Directorate of Logistics, Cargo & Traffic Management Branch (A4TC), Commercial Services Team, 402 Scott Drive, Unit 2A2, Scott AFB, IL 62225–5308. Electronic comments or requests for additional information may be sent by email to: *org.amca4–67@us.af.mil.*

FOR FURTHER INFORMATION CONTACT: AMC/A4TC, Commercial Services Team, (618) 229–4684, THOMAS J. TRUMBULL II, Colonel, USAF, Chief Air Transportation Division Directorate of Logistics.

SUPPLEMENTARY INFORMATION:

Reference: 10 USC 2304(c)(3), Industrial Mobilization, exception to full and open competition is essential to maintain adequate airlift services in case of a national emergency requiring activation of the Civil Reserve Air Fleet (CRAF). The use of the Industrial Mobilization exception to limit competition to CRAF carriers effectively supports the implementation of the National Airlift Policy by incentivizing carriers to keep vital commercial airlift resources available as a mobilization base in the event of a national or military emergency. The CRAF participation eligibility requirement, which will be included in the domestic air tender program, supports the development and maintenance of a robust CRAF program.

Background: CRAF is a voluntary program through which the nation's airlines provide stand-by commitments to support mobilization as a supplement to DOD organic airlift capacity. CRAF participants provide civilian airlift assets needed to support military operations and mobilization requirements enabling the DOD to meet peacetime requirements, surge needs, and mobilization requirements for major crises.

Miscellaneous: The SDDC Docketing System can be accessed at *http://docketing.sddc.army.mil.*

Henry Williams, Civ,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2014–20877 Filed 9–2–14; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0127]

Agency Information Collection Activities; Comment Request; Middle Grades Longitudinal Study of 2016–2017 (MGLS:2017) 2015 Field Test

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 3, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0127 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2016–2017 (MGLS:2017) 2015 Field Test.

OMB Control Number: 1850–0911.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 10,040.

Total Estimated Number of Annual Burden Hours: 3,386.

Abstract: The Middle Grades Longitudinal Study of 2016–2017 (MGLS:2017), conducted by the National Center for Education Statistics (NCES), is the first study to follow a nationally-representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study will focus on student achievement in mathematics and literacy, along with measures of student executive function, socioemotional well-being and other outcomes. The study will also include an oversample of students with different types of disabilities that will provide descriptive information on their outcomes, educational experiences, and special education services. Baseline data for the MGLS:2017 will be collected from a nationally-representative sample of 6th grade students in spring of 2017 with annual follow-ups in spring 2018 and spring 2019, when most of the students in the sample will be in grades 7 and 8, respectively. This request is to conduct the MGLS:2017 field test in the Spring of 2015, to evaluate the proposed assessments, instruments, and data collection procedures in a real world setting; identify potential challenges that could hinder the national effort; and test various procedures and strategies to inform plans for the national study.

Dated: August 28, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–20892 Filed 9–2–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0089]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; An Impact Evaluation of the Teacher Incentive Fund (TIF)

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 3, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0089 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Warner, 202–208–7169.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: An Impact Evaluation of the Teacher Incentive Fund (TIF).

OMB Control Number: 1850–0876.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 3,893.

Total Estimated Number of Annual Burden Hours: 1,762.

Abstract: This is a revised submission to request approval for continued data collection activities that will be used to support An Impact Evaluation of the Teacher Incentive Fund (TIF). The evaluation will estimate the impact of the differentiated pay component of the TIF program on student achievement and teacher and principal quality and retention. In addition, the evaluation will provide descriptive information of the program's implementation, grantee challenges, and grantee responses to challenges. A total of four years of data are being collected, and thus requires approval for a final round of data collection.

Dated: August 27, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–20860 Filed 9–2–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Progress in International Reading Literacy Study (PIRLS 2016) Field Test and Recruitment for Main Study

AGENCY: Institute of Education Sciences, National Center for Education Statistics (IES–NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before October 3, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0101 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubdzela, 202–502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Progress in International Reading Literacy Study (PIRLS 2016) Field Test and Recruitment for Main Study.

OMB Control Number: 1850–0645.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 2,815.

Total Estimated Number of Annual Burden Hours: 5,694.

Abstract: The Progress in International Reading Literacy Study (PIRLS) 2016 is coordinated by the International Association for the Evaluation of Educational Achievement (IEA) and in the U.S. administered by the National Center for Education Statistics (NCES). Since its inception in 2001, PIRLS has continued to assess students every five years (2001, 2006, 2011, 2016). It is typically administered in more than 40 countries and provides data for internationally benchmarking U.S. performance in fourth-grade reading. PIRLS also collects background information on students, parents, teachers, schools, curricula, and official education policies. Each successive round of participation in PIRLS provides trend information about U.S. 4th-grade students' knowledge and abilities in reading relative to other countries, and about the cultural environments, teaching practices, curriculum goals, and institutional arrangements that are associated with student achievement, and how these change over time in different countries. This submission describes the overarching plan for all phases of the data collection, including the field test and the main study. The field test will take place in March–April, 2015, and the main study in the spring of 2016. The purpose of the PIRLS field test is to evaluate new assessment items and background questions to ensure practices that promote low exclusion rates, and to ensure that classroom and student sampling procedures proposed for the main study are successful. This submission requests approval for recruiting for the 2015 field test and 2016 main study; conducting the 2015 field test data collection; and a description of the overarching plan for all of the phases of the data collection, including the 2016 main study.

Dated: August 27, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–20801 Filed 9–2–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: September 22, 2014; 8:30 a.m. to 6:00 p.m. September 23, 2014; 8:30 a.m. to 12:00 noon

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Edmund J. Synakowski, Designated Federal Officer, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue SW., Washington, DC 20585–1290. Telephone: (301) 903–4941.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To consider for approval the report of the FESAC Strategic Plan Subcommittee. The report was requested in a letter from the Acting Director of the Office of Science (SC), dated April 8, 2014, in response to the FY 2014 Omnibus Appropriations Act which requires the Department to submit a ten-year strategic plan for the

Fusion Energy Sciences (FES) program by January 2015.

Tentative Agenda Items

- Approval of the report of the Strategic Plan Subcommittee
- DOE/SC Perspective
- FES Perspective
- Update on the charge on the Committee of Visitors for FES
- Public Comment
- Adjourn

Note: Remote attendance of the FESAC meeting will be possible via ReadyTalk. Instructions can be found on FESAC Web site: *(http://science.energy.gov/fes/fesac/meetings/)* or by contacting Dr. Samuel J. Barish by email: *sam.barish@science.doe.gov* or by phone (301) 903–2917.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Ed Synakowski at (301) 903–8584 (fax) or *Ed.Synakowski@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements during the Public Comments time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days on the Fusion Energy Sciences Advisory Committee Web site—*http://science.energy.gov/fes/fesac/*

Issued at Washington, DC, on August 26, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–20904 Filed 9–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 17, 2014; 8:00 a.m.–5:00 p.m. Thursday, September 18, 2014; 8:00 a.m.–12:15 p.m.

ADDRESSES: The Shilo Inn Convention Center, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: David Borak, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–9928.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics

Wednesday, September 17, 2014

- EM Program Update
- EM SSAB Chairs' Round Robin: Topics, Achievements, and Accomplishments
- EM SSAB Chairs' Roundtable: Setting Budget Priorities
- EM Acquisition and Project Management Presentation
- Public Comment Period

Thursday, September 18, 2014

- DOE Headquarters News and Views
- EM Headquarters Waste Disposition Strategies
- Public Comment

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC, on August 26, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–20907 Filed 9–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

DATES: September 19, 2014, 9:00 a.m. to 12:00 p.m.

ADDRESSES: National Academy of Sciences, (Lecture Room), 2101 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video Web cast and an archive of the Web cast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Ashley Predith at *apredith@ostp.eop.gov,* (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of

science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on September 19, 2014 from 9:00 a.m. to 12:00 p.m.

Open Portion of Meeting: During this open meeting, PCAST is scheduled to discuss its work on education information technology and its work on advanced manufacturing. PCAST will also hear from speakers who will remark about the future of science and technology and from presenters who will talk about science, technology, engineering, and mathematics education and training. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on September 19, 2014, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on September 19, 2014 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. Eastern Time on September 11, 2014. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. Eastern Time on September 11, 2014 so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Ashley Predith at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on August 27, 2014.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–20953 Filed 9–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Commission to Review the Effectiveness of the National Energy Laboratories

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Commission to Review the Effectiveness of the National Energy Laboratories (Commission). The Commission was created pursuant section 319 of the Consolidated Appropriations Act, 2014, Public Law No. 113–76, and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. This notice is provided in accordance with the Act.

DATES: Monday, September 15, 2014; 10:30 a.m.–4:00 p.m.

ADDRESSES: Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–3787; email *crenel@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Commission was established to provide advice to the Secretary on the Department's national laboratories. The Commission will review the DOE national laboratories for alignment with the Department's strategic priorities, clear and balanced missions, unique capabilities to meet current energy and national security challenges, appropriate size to meet the Department's energy and national security missions, and support of other Federal agencies. The Commission will also look for opportunities to more effectively and efficiently use the capabilities of the national laboratories and review the use of laboratory directed research and development (LDRD) to meet the Department's science, energy, and national security goals.

Purpose of the Meeting: This meeting is the second meeting of the Commission.

Tentative Agenda: The meeting will start at 10:30 a.m. on September 15, 2014. The tentative meeting agenda includes a review of a few prior studies focused on the DOE national labs, discussion with DOE Office Directors with oversight of national labs and user facilities, and comments from the public. The meeting will conclude at approximately 4:00 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Wednesday, September 10, 2014 at email *crenel@hq.doe.gov.* Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not

exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 10:30 a.m. on September 15, 2014.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, or to email *crenel@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the Commission Web site at: *http://energy.gov/labcommission.*

Issued in Washington, DC, on August 27, 2014.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–20906 Filed 9–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 24, 2014; 12:00 p.m.–5:45 p.m. Thursday, September 25, 2014; 8:00 a.m.–12:50 p.m.

ADDRESSES: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (202) 586–1060 or Email: *matthew.rosenbaum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Electricity Advisory Committee (EAC) was re-established in July 2010, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse background selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Tentative Agenda: The meeting of the EAC is expected to include an update on the programs and initiatives of DOE's Office of Electricity Delivery and Energy Reliability and the DOE Quadrennial Energy Review. The meeting is also expected to include a discussion of information and tool development to support consideration of future regulatory models, as well as a discussion of gas-electric integration. Additionally, the meeting is expected to include a discussion of the activities of the Smart Grid Subcommittee, the Energy Storage Subcommittee, the Power Delivery Subcommittee, and the Workforce Working Group.

Tentative Agenda: September 24, 2014

12:00 p.m.–1:00 p.m. Swearing in Ceremony for New EAC Members
12:00 p.m.–1:00 p.m. EAC Leadership Committee Meeting
12:00 p.m.–1:00 p.m. Registration
1:00 p.m.–1:15 p.m. Welcome, Introductions, Developments since the June 2014 Meeting
1:15 p.m.–1:45 p.m. Update on the U.S. Department of Energy (DOE), Office of Electricity Delivery and Energy Reliability's (OE) Programs and Initiatives
1:45 p.m.–2:15 p.m. Update on the DOE Quadrennial Energy Review
2:15 p.m.–2:30 p.m. Break
2:30 p.m.–3:50 p.m. Panel—Information and Tool Development to Support Consideration of Future Regulatory Models
3:50 p.m.–4:10 p.m. EAC Member Discussion of Regulatory Issues
4:10 p.m.–4:25 p.m. Break
4:25 p.m.–5:15 p.m. EAC Smart Grid Subcommittee Papers and Work Plan
5:15 p.m.–5:35 p.m. EAC Member Discussion of Smart Grid Subcommittee Plans
5:35 p.m.–5:45 p.m. Wrap-up and Adjourn Day One of September 2014 Meeting of the EAC

Tentative Agenda: September 25, 2014

8:00 a.m.–8:20 a.m. Ethics Briefing—For All EAC Members
8:20 a.m.–9:40 a.m. Panel—Gas-Electric Integration
9:40 a.m.–10:00 a.m. EAC Member Discussion of Gas-Electric Panel Topics
10:00 a.m.–10:15 a.m. Break
10:15 a.m.–11:05 a.m. EAC Energy Storage Subcommittee Activities and Plans
11:05 a.m.–11:25 a.m. EAC Member Discussion of Energy Storage Subcommittee Plans
11:25 a.m.–12:15 p.m. EAC Power Delivery Subcommittee Activities and Plans
12:15 p.m.–12:35 p.m. EAC Member Discussion of Power Delivery Subcommittee and Workforce Working Group Plans
12:35 p.m.–12:45 p.m. Public Comments (Must register at time of check in)
12:45 p.m.–12:50 p.m. Wrap-up and Adjourn September 2014 Meeting of the EAC

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC Web site at: *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

Public Participation: The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on Thursday, September 25, 2014, but must register at the registration table in advance. Approximately 10 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement to Mr. Matthew Rosenbaum. You may submit comments, identified by ''Electricity Advisory Committee Open Meeting,'' by any of the following methods:

- *Mail/Hand Delivery/Courier:* Matthew Rosenbaum, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW., Washington, DC 20585.
- *Email: matthew.rosenbaum@hq.doe.gov.* Include ''Electricity Advisory Committee Open Meeting'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and identifier. All comments received will be posted without change to *http://energy.gov/oe/services/electricity-advisory-committee-eac,* including any personal information provided.

- *Docket:* For access to the docket, to read background documents or

comments received, go to *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. You must also explain the reasons why you believe the deleted information is exempt from disclosure.

DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

Note: Delivery of the U.S. Postal Service mail to DOE may be delayed by several weeks due to security screening. DOE, therefore, encourages those wishing to comment to submit comments electronically by email. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes: The minutes of the EAC meeting will be posted on the EAC Web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Matthew Rosenbaum at the address above.

Issued in Washington, DC, on August 27, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–20905 Filed 9–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, October 1, 2014; 8:30 a.m. to 5:00 p.m., Thursday, October 2, 2014; 8:30 a.m. to 12:00 p.m.

ADDRESSES: Hilton Washington DC/Rockville Hotel & Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290. Phone (301) 903–9817; Fax (301) 903–5051 or email: *david.thomassen@science.doe.gov.* The most current information concerning this meeting can be found on the Web site: *http://science.energy.gov/ber/berac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

- Report from the Office of Science
- Report from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Climate and Environmental Sciences Divisions
- Discussion of the Biological Systems Science Division Committee of Visitors Report
- Atmospheric Radiation Measurement program (ARM) Update
- Reports on recent workshops
- Science Talks
- New Business
- Public Comment

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://science.energy.gov/ber/berac/meetings/berac-minutes/.*

Issued in Washington, DC, on August 27, 2014.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–20954 Filed 9–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–15–000]

Commission Information Collection Activities (FERC–922); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 USC 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) Staff is soliciting public comment on a revised, previously approved information collection, FERC–922, Performance Metrics for ISOs, RTOs and Regions Outside ISOs and RTOs.

DATES: Comments on the collection of information are due November 3, 2014.

ADDRESSES: You may submit comments (identified by Docket No. AD14–15–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–922, Performance Metrics for ISOs, RTOs and Regions Outside of ISOs and RTOs.

OMB Control No.: 1902–0262.

Type of Request: Reinstatement and revision of an information collection.

Abstract: The Commission is continuing its efforts to collect performance metric information from ISOs, RTOs, and public utilities in regions outside ISO and RTO regions. This includes the submission of information relating to dispatch reliability, transmission planning, the marginal cost of energy and resource availability. The information submitted by ISOs, RTOs, and participating public utilities in regions outside ISOs and RTOs is used to evaluate reliability and systems operations performance.

Concurrent with the issuance of this notice, Commission Staff is issuing a report establishing 30 common metrics for ISOs/RTOs and utilities. Commission Staff intends to collect information on these common metrics initially covering the period 2008–2012, and at a later time for the 2010–2014 period. The common metrics are attached to this notice. The attachment will not be published in the **Federal Register** but will be visible as part of this notice in the Commission's eLibrary system.

Type of Respondents: ISOs, RTOs and public utilities.

Estimate of Annual Burden [1]: Commission Staff expects that respondents will submit performance information every two years and that this collection will initially have a three year approval from OMB. For this reason, the annual number of responses is ''0.5'' in the table below (i.e. the collection will occur twice over the three year approval period).

FERC–922

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden hours & cost per response [2] (4)	Total annual burden hours & total annual cost (3)*(4)=(5)	Cost per respondent per year ($) (5)÷(1)
Metrics Data Collection	11	0.5	5.5	140 $11,228	770 $61,754	$5,614
Write Performance Analysis	11	0.5	5.5	85 $6,817	467.5 $37,493.50	$3,408.50
Management Review	11	0.5	5.5	20 $1,694.40	110 $9,319.20	$847.20
TOTAL					1347.50	$9,869.70
					$108,566.70	

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $XX per Hour = Average Cost per Response. The hourly cost figure for the metrics data collection and writing the performance analysis is based on the loaded average wage for an analyst, attorney, engineer, and economist ($80.20/hour). The hourly cost figure for the management review is based on the loaded average wage for management ($84.72/hour). Wage and benefits data are from the Bureau of Labor Statistics at *http://www.bls.gov/oes/current/naics2_22.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm.*

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Attachment

Performance metric	Specific metric(s)
	Reliability
A. NERC Reliability Standards Compliance	1. References to which NERC standards are applicable. 2. Number of violations self-reported and made public by NERC/FERC. 3. Number of violations identified and made public as NERC audit findings. 4. Total number of violations made public by NERC/FERC. 5. Severity level of each violation made public by NERC/FERC. 6. Compliance with operating reserve standards. 7. Unserved energy (or load shedding) caused by violations. Additional detail will be provided on (1) number of events; (2) duration of the events; (3) whether the events occurred during on/off-peak hours; (4) additional information on equipment types affected and kV of lines affected; and (5) number of events (and severity and duration of events) resulting in load shedding based on the utilization of TPL–002 Footnote b criteria. Utilities outside ISO and RTO regions should limit reporting to the same eight functional areas used by the ISOs and RTOs: 1. Balancing Authority. 2. Interchange Authority.

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, *see* 5 CFR 1320.3 (2012).

Performance metric	Specific metric(s)
	3. Planning Authority. 4. Reliability Coordinator. 5. Resource Planner. 6. Transmission Operator. 7. Transmission Planner. 8. Transmission Service Provider.
B. Dispatch Reliability	1. Balancing Authority ACE Limit (BAAL) or CPS1 and CPS2. 2. Energy Management System (EMS) availability.
C. Load Forecast Accuracy	Actual peak load as a percentage variance from forecasted peak load.
D. Wind Forecasting Accuracy	Actual wind availability compared to forecasted wind availability.
E. Unscheduled Flows	Difference between net actual interchange (actual measured power flow in real time) and the net scheduled interchange in megawatt hours. • Reported in FERC Form No. 714.
F. Transmission Outage Coordination	1. Percentage of ≥ 200 kV planned outages of 5 days or more for which ISO, RTO or utility notified customers at least 1 month prior to the outage commencement date. 2. Percentage of ≥ 200 kV outages cancelled by utility after being approved previously.
G. Long-Term Reliability Planning—Transmission	1. Number of facilities approved for construction due to reliability purposes. 2. Percentage of approved construction projects on schedule and completed. 3. Performance of planning process related to: a. Completion of reliability studies. b. Completion of economic studies.
H. Long-Term Reliability Planning—Resources	1. Processing time for generation interconnection requests. 2. Actual reserve margins compared with planned reserve margins.
I. Interconnection and Transmission Process Metrics	1. Number of requests. 2. Number of studies completed. 3. Average age of incomplete studies. 4. Average time for completed studies. 5. Total cost and types of studies completed (e.g., feasibility study, system impact study and facility study).
J. Special Protection Systems	1. Number of special protection systems. 2. Percentage of special protection systems that responded as designed when activated • Applicable pool of special protection systems should be based on how the reporting entity's Regional Entity defines ''special protection systems.'' 3. Number of unintended activations.
System Operations Measures	
A. System Lambda	System Lambda (on marginal unit) • System Lambda metric does not apply to ISOs, RTOs or utilities where the marginal price is set by hydro units. • System lambda data will be based on FERC Form No. 714 information.
B. Resource Availability	1—System forced outage rate as measured over 12 months.
C. Fuel Diversity	Fuel diversity in terms of energy produced and installed capacity.

[FR Doc. 2014–20848 Filed 9–2–14; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2564–003; *ER10–2289–003; ER10–2600–003.*

Applicants: UNS Electric, Inc., Tucson Electric Power Company, UniSource Energy Development Company.

Description: Response to Request for Additional Information of Tucson Electric Power Company, et al.

Filed Date: 8/25/14.

Accession Number: 20140825–5069

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: ER13–1422–006.

Applicants: Ebensburg Power Company.

Description: Notice of Non-Material Change in Status of Ebensburg Power Company.

Filed Date: 8/22/14.

Accession Number: 20140822–5184.

Comments Due: 5 p.m. ET 9/12/14.

Docket Numbers: ER14–2187–003.

Applicants: Grand Ridge Energy Storage LLC.

Description: Tariff Amendment per 35.17(b): Third Supplement to Market-Based Rate Application to be effective 8/16/2014.

Filed Date: 8/25/14.

Accession Number: 20140825–5082.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: ER14–2697–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amendments to Schedule 12—Appendix A re RTEP approved by PJM Board on 7/23/2014 to be effective 11/20/2014.

Filed Date: 8/22/14.

Accession Number: 20140822–5157.

Comments Due: 5 p.m. ET 9/12/14.

Docket Numbers: ER14–2698–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Filing of a Joint Use Agreement with Guthrie County REC to be effective 8/26/2014.

Filed Date: 8/25/14.

Accession Number: 20140825–5129.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: ER14–2699–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Wholesale Market Participation Agreement No. 3252,

Queue No. W4–031 to be effective 7/24/2014.

Filed Date: 8/25/14.

Accession Number: 20140825–5136.

Comments Due: 5 p.m. ET 9/15/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–49–000.

Applicants: MDU Resources Group, Inc.

Description: Application for authorization to issue securities of MDU Resources Group, Inc.

Filed Date: 8/22/14.

Accession Number: 20140822–5185.

Comments Due: 5 p.m. ET 9/12/14.

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: August 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–20849 Filed 9–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1195–000.

Applicants: Sierrita Gas Pipeline LLC.

Description: Compliance filing per 154.203: Tariff Implementation and Compliance Filing to be effective 12/31/9998.

Filed Date: 8/21/14.

Accession Number: 20140821–5081.

Comments Due: 5 p.m. ET 9/2/14.

Docket Numbers: RP14–1197–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: § 4(d) rate filing per 154.204: Enable Energy Negotiated Rate to be effective 8/1/2014.

Filed Date: 8/22/14.

Accession Number: 20140822–5110.

Comments Due: 5 p.m. ET 9/3/14.

Docket Numbers: RP14–1198–000.

Applicants: Eastern Shore Natural Gas Company.

Description: Compliance filing per 154.203: White Oak Lateral DLFT and DLIT Tariff Revisions to be effective 8/22/2014.

Filed Date: 8/22/14.

Accession Number: 20140822–5122.

Comments Due: 5 p.m. ET 9/3/14.

Docket Numbers: RP14–1199–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) rate filing per 154.204: Neg Rate Amendment 2014–08–20 MFNs to be effective 7/1/2014.

Filed Date: 8/22/14.

Accession Number: 20140822–5147.

Comments Due: 5 p.m. ET 9/3/14.

Docket Numbers: RP14–1200–000.

Applicants: Destin Pipeline Company, L.L.C.

Description: Petition for Approval of Stipulation and Agreement of Settlement of Destin Pipeline Company, L.L.C.

Filed Date: 8/25/14.

Accession Number: 20140825–5072.

Comments Due: 5 p.m. ET 9/8/14.

Docket Numbers: RP14–1201–000.

Applicants: Kinder Morgan Louisiana Pipeline LLC.

Description: § 4(d) rate filing per 154.204: Removal of Terminated Agreement to be effective 8/16/2014.

Filed Date: 8/25/14.

Accession Number: 20140825–5147.

Comments Due: 5 p.m. ET 9/8/14.

The filings are accessible in the Commission's eLibrary system by clickling 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 date(s). 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: August 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–20850 Filed 9–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–2695–000]

Ioway 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 Ioway Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, 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 September 15, 2014.

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(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: August 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–20851 Filed 9–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–39–000]

Whiting Oil and Gas Corporation; Notice of Petition for Waiver

Take notice that on August 12, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), Whiting Oil and Gas Corporation filed a petition requesting temporary waiver of the Interstate Commerce Act Section 6 and Section 20 tariff filing and reporting requirements applicable to interstate common carrier pipelines with respect to its natural gas liquids pipeline, as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceedings 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) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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 proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Comments: 5:00 p.m. Eastern Time on September 11, 2014.

Dated: August 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–20852 Filed 9–2–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0548; FRL–9916–16–OAR]

Proposed Information Collection Request; Comment Request; Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network'' (EPA ICR No. 1591.26, OMB Control No. 2060–0277) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through 12/31/2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 3, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2014–0548 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jose Solar, Office of Transportation and Air Quality, (Mail Code 6405A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9027; fax number: 202–343–2801; email address: *Solar.Jose@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Gasoline combustion is the major source of air pollution in most urban areas. In the 1990 amendments to the Clean Air Act (Act), section 211(k), Congress required that gasoline dispensed in nine areas with severe air quality problems, and areas that opt-in, be reformulated to reduce toxic and ozone-forming emissions. (Ozone is also known as smog.) Congress also required that, in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be ''dumped'' into the remainder of the country's gasoline, known as conventional gasoline (CG). The Environmental Protection Agency (EPA) promulgated regulations at 40 CFR part 80, subpart D—Reformulated Gasoline, subpart E—Anti-Dumping, and subpart F—Attest Engagements, implementing the statutory requirements, which include standards for RFG (80.41) and CG (80.101). The regulations also contain reporting and recordkeeping requirements for the production, importation, transport and storage of gasoline, in order to demonstrate compliance and facilitate compliance and enforcement. The program is run by the Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Enforcement is done by the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance. This program excludes California, which has separate requirements for gasoline.

The United States has an annual gasoline consumption of about 133 billion gallons, of which about 30% is RFG. In 2013 EPA received reports from 255 refineries, 60 importer facilities/facility groups, 51 oxygenate blending facilities, 25 independent laboratory facilities, and the RFG Survey Association, Inc. under this program.

Section 211(k) of the Act requires the Administrator to promulgate regulations establishing requirements for RFG to be used in gasoline-fueled vehicles in the nine specified nonattainment areas, and opt-in areas. The Act specifically provides that recordkeeping, reporting, and sampling and testing requirements are among the tools EPA may use in enforcement of the provisions, and also provides that EPA must develop an enforceable scheme. Sections 114 and 208 of the Clean Air Act, 42 U.S.C. 7414 and 7542, authorize EPA to require recordkeeping and reporting regarding enforcement of the provisions of Title II of the Clean Air Act.

Information claimed as confidential is handled in accordance with EPA Freedom of Information Act regulations at 40 CFR 2. Most of the information submitted is claimed as such, and the forms have a simple check-off for this. Data submitted electronically are encrypted. Hard copies are housed in a secure area. Electronic files are in the same area on a secure data base.

Form Numbers: Reformulated Gasoline and Conventional Gasoline reporting is now required to be completed electronically. The reporting is to be made through The EPA Fuels Programs Reporting Forms: *http://www.epa.gov/otaq/fuels/reporting/index.htm.*

Respondents/affected entities: Recordkeeping and, in some cases, reporting are required by the following gasoline marketing-related industries, SIC codes: Refiners (2911), importers (5172), terminals (5171), pipelines (4613), truckers and other distributors (4212), and retailers/wholesale purchaser-consumers (5541). NAICS codes: Refiners (324110), pipelines (486910) and terminals (424710). Not all NAICS codes for the responsible reporting parties were found. These are, however, parties which are obligated to report: Importers, truckers and other distributors and retailers/wholesale purchaser-consumers. Some refiners are importers but that is not always the case. Many of the required records are generated and maintained currently in the normal course of business. Without the required records EPA would be unable to enforce the Congressionally-mandated RFG and anti-dumping requirements.

Respondent's obligation to respond: Mandatory per 40 CFR Part 80.

Estimated number of respondents: 4,068.

Frequency of response: Quarterly, Annually, on Occasion.

Total estimated burden: 127,041 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $41,007,628 (per year), includes $12,177,318 annualized capital or operation & maintenance costs.

Changes in Estimates: Compared with the ICR currently approved by OMB, there is no change of burden hours. There is an increase in the total burden cost due to the update in labor salaries.

Dated: August 21, 2014.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2014–20914 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–18–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency (EPA's) approval of the State of Arizona's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective October 3, 2014 for the State of Arizona's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on September 3, 2014 for the State of Arizona's National Pollutant Discharge Elimination System program.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government

will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 14, 2010, the Arizona Department of Environmental Quality (ADEQ) submitted an application titled ''AZ ADEQ SmartNOI/SDWIS Lab to State'' for revisions/modifications of its EPA-authorized programs under title 40 CFR. EPA reviewed ADEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Arizona's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 122 and 141 is being published in the **Federal Register**: Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System; and Part 142—National Primary Drinking Water Regulations Implementation.

ADEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Arizona's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Arizona's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: August 21, 2014.

Matthew Leopard,

Acting Director, Office of Information Collection.

[FR Doc. 2014–20894 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9016–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 08/18/2014 Through 08/22/2014 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140241, Draft Supplement, FHWA, CO, I–70 East, from I–25 to Tower Road, Comment Period Ends: 10/14/2014, Contact: Chris Horn 720–963–3017.

EIS No. 20140242, Draft EIS, USFS, CO, Pawnee National Grassland Oil and Gas Leasing Analysis, Comment Period Ends: 10/14/2014, Contact: Karen Roth 970–295–6621.

EIS No. 20140243, Draft EIS, USFS, NV, Heavenly Mountain Resort Epic Discovery Project, Comment Period Ends: 10/28/2014, Contact: Matt Dickinson 530–543–2769.

Dated: August 26, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–20695 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–20–OECA]

Recent Postings to the Applicability Determination Index Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards Under the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and/or the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: *http://www.epa.gov/compliance/monitoring/programs/caa/adi.html.* The letters and memoranda on the ADI may be located by control number, date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA by phone at: (202) 564–7027, or by email at: *malave.maria@epa.gov.* For technical questions about individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions of the NSPS in 40 Code of Federal Regulations (CFR) part 60 and the General Provisions of the NESHAP in 40 CFR part 61 provide

that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are commonly referred to as applicability determinations. See 40 CFR 60.5 and 61.06. Although the NESHAP part 63 regulations [which include Maximum Achievable Control Technology (MACT) standards] and section 111(d) of the Clean Air Act (CAA) contain no specific regulatory provision providing that sources may request applicability determinations, EPA also responds to written inquiries regarding applicability for the part 63 and section 111(d) programs. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping that is different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA's written responses to these inquiries are commonly referred to as alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping, or reporting requirements contained in the regulation. EPA's written responses to these inquiries are commonly referred to as regulatory interpretations. EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them to the Applicability Determination Index (ADI). In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over three thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS, NESHAP, and stratospheric ozone regulations. Users can search for letters and memoranda by date, office of issuance, subpart, citation, control number, or by string word searches. Today's notice comprises a summary of 64 such documents added to the ADI on August 6, 2014. This notice lists the subject and header of each letter and memorandum, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: *www.epa.gov/compliance/monitoring/programs/caa/adi.html.*

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on August 6, 2014; the applicable category; the section(s) and/or subpart(s) of 40 CFR parts 60, 61, or 63 (as applicable) addressed in the document; and the title of the document, which provides a brief description of the subject matter.

We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is ''of nationwide scope or effect'' for purposes of CAA section 307(b)(1). For example, this notice does not convert an applicability determination for a particular source into a nationwide rule. Neither does it purport to make a previously non-binding document binding.

ADI Determinations Uploaded on August 6, 2014

Control No.	Categories	Subparts	Title
1200009	NSPS	OOO, UUU	Request for Force Majeure Delay for an Initial Performance Test for a Crusher and Calciner Facility.
1200024	NSPS	J	Request for Exemption in Lieu of AMP for Combusting an Inherently Low Sulfur Gas Vent Stream from a Continuous Catalytic Reformer at a Refinery.
1200033	NSPS	JJJJ, KKK	Request for Clarification of Applicability to Fuel Gas Treatment Unit at Compressor Station.
1200043	NSPS	J	Request for Alternate Monitoring Plan for Monitoring H2S AMP in Lieu of CEMS at a Refinery.
1200047	NSPS	EEEE, FFFF	Request for Exemption of Contraband Incinerator Based on the Owner and Operator Definition.
1200048	NSPS	J	Request for Exemption in Lieu of AMP for Combusting an Inherently Low Sulfur Gas Vent Stream at a Refinery.
1200049	NSPS	D	Boiler Derate not Approved for Changes only on Fuel Feed System.
1200052	NSPS	VVa	Request for Clarification of Initial Monitoring Requirement for Pumps and Valves for New Process Units.
1200053	NSPS	J	Request for Alternate Monitoring Plan for Vented Gas Stream with an Inherently Low and Stable Amount of H2S.
1200056	NSPS	J	Request for Exemption in Lieu of AMP for Combusting an Inherently Low Sulfur Gas Vent Stream from a Cyclic Reformer Caustic Scrubber at a Refinery.
1200058	NSPS	J	Request for Exemption in Lieu of AMP for Combusting an Inherently Low Sulfur Gas Vent Stream at a Refinery.
1200059	NSPS	J	Exemption in Lieu of AMP-Merox Disulfide Separator Vent Stream—NSPS Subpart J—Chalmette Refining—Chalmette, Louisiana Refinery.
1200064	NSPS	J	Request for Exemption in Lieu of AMP for Combusting an Inherently Low Sulfur Gas Vent Stream from a Continuous Catalytic Reformer at a Refinery.
1200074	NSPS	J	Request for Exemption in Lieu of AMP for Combusting an Inherently Low Sulfur Gas Vent Stream at a Refinery.

ADI DETERMINATIONS UPLOADED ON AUGUST 6, 2014—Continued

Control No.	Categories	Subparts	Title
1200080	NSPS	J	Request for Alternate Monitoring Plan for Sour Water Tanks at a Refinery.
1200086	NSPS	OOO	Initial Performance Testing Waiver for an NSPS Facility that Operates Very Infrequently.
1200088	NSPS	WWW	Request for Approval to Continue Operating Wells at a Closed Landfill Despite Instances of Positive Pressure.
1200093	NSPS	LL	Request for Applicability Determination for Dust Collector Emissions at Conveyor Belt Transfer Points in a Metallic Mineral Processing Facility.
1200094	NSPS	WWW	Alternative Monitoring Plan for Higher Operating Temperatures for Five Gas Wells.
1400001	NSPS	WWW	Request for Use of Alternative Span Value for Nitrogen Oxide CEMs at Landfill.
1400002	NSPS	KKKK, ZZZZ	Request to Determine if Stationary Reciprocating Internal Combustion Engines (RICE) Meet Institutional Emergency Definition.
1400004	NSPS	Ce, WWW	Request for Applicability Determination on Landfill Thresholds.
1400006	NSPS	J, Ja	Request for Alternative Monitoring Plan for Monitoring Hydrogen Sulfide (H2S) in Tank Degassing Vapors Combusted in Portable Thermal Oxidizers at Petroleum Refineries.
1400007	MACT, NSPS	J, UUU	Alternative Monitoring Plan for Opacity for a Fluid Catalytic Cracking Unit Regenerator.
1400008	NSPS	WWW	Request for Alternative Compliance Remedy/Schedule to Correct Surface Emissions Exceedances at Landfill.
1400009	NSPS	WWW	Request for Alternative Monitoring using a Higher Operating Value for Oxygen for a Landfill Gas Collector.
1400010	NSPS	Db	Alternative Span Value for Nitrogen Oxide CEMs.
1400011	NSPS	J	Request for Exemption in Lieu of Alternative Monitoring Plan for Fuel Gas Streams Routed From Caustic Regeneration Unit to Furnaces.
1400012	NSPS	J, Ja	Alternative Monitoring Plan for Hydrogen Sulfide (H2S) in Tank Degassing Vapors Combusted in Portable Thermal Oxidizers at Petroleum Refineries.
1400013	NSPS	WWW	Request for Alternative Compliance Timeline for Landfill Gas Extraction Well.
1400014	MACT, NSPS	EEEEE, UUU	Alternative Monitoring Request for a New Sand Cooler at an Iron Foundry.
1400015	MACT, NSPS	EEEEE, UUU	Alternative Monitoring Request for a New Sand Cooler at an Iron Foundry.
1400017	NSPS	EEEE	Request for Alternative Monitoring Plan for a Continuous Emission Monitoring System for a Commercially Operated Contraband Incinerator.
1400018	MACT, NSPS	EEEE, HHHHH, JJJJ, KK, RR, SSSS, TT.	Request for Several MACT/NSPS Applicability Determinations for Different Process at a Print Station Facility.
1400020	NSPS	WWW	Request for Alternative Remedy and Compliance Timeline for a Landfill Gas Extraction Well.
A140001	Asbestos	M	Applicability of Test Methods to Asbestos-Containing Bulk Samples.
A140002	Asbestos	M	Request for Determination on whether maintenance of High Voltage Electric Transmission Towers is Renovation or Demolition.
M110009	MACT	XXXXXX	Request for Clarification of Applicability of Metals Processing Operations at an Orthopedic Components Manufacturer.
M110010	MACT	ZZZZ	Request for Exemption as Emergency Engines for Stationary Reciprocating Internal Combustion Engines.
M110011	MACT, NESHAP	TTTTTT	Request for Clarification of Applicability of Rule to a Precious Metals Melting Operation.
M110012	MACT	JJJJJ	Request for Clarification of Wood-Fired Boiler Source Categorization.
M110013	MACT	WWWWWW	Alternative Monitoring Plan for Batch Electrolytic Process Tanks at a Media Replication Facility.
M110014	MACT	WWWW	Clarification on Monthly Compliance Demonstration for Hazardous Air Pollutants for Open Moulding Operations.
M110016	MACT, NESHAP	JJJJJJ	Request for Clarification of Applicability to Electric Boilers when Burning Fuel Oil as a Backup Fuel.
M110017	MACT	EEE	Request to Revise Alternative Monitoring Plan for Deactivation Furnace System of a Hazardous Waste Combustor.
M110018	MACT	CCCCCCC, VVVVVV	Request for Alternative Compliance Methods for Hazardous Air Pollutants for an Area Source.

ADI DETERMINATIONS UPLOADED ON AUGUST 6, 2014—Continued

Control No.	Categories	Subparts	Title
M120009	MACT	LLL	Request for Approval of Alternate Test Method for Demonstrating Compliance with Particulate Emissions Standards for a Portland Cement Facility.
M120013	MACT	MMM, NNNNN	Request to Waive pH Monitoring Requirement for Control of Emissions from Tank Truck Loading and Storage Tanks.
M120026	MACT	JJJJ	Use of Alternative Comparative Monitoring in lieu of Calibration Verification Requirements.
M120034	MACT, NSPS	IIII, JJJJ, ZZZZ	Reciprocating Internal Combustion Engine Overhaul does not trigger Reconstruction and Modification because of Costs and Unaltered Emissions.
M120035	MACT	MMMM, XXXXXX	Clarification on Applicability of Area Source Requirements for a Metal Fabrication and Finishing Source Facility.
M130003	MACT	ZZZZ	Request to Waive an Initial Performance Test for Identical RICEs at a HAP Area Source.
M140001	MACT	EEE	Request Alternative Operating Parameter Limit for Liquid Waste Firing System.
M140002	MACT, NESHAP, NSPS	EEEE, JJJJJJ	Energy Recovery and Syngas Exemption Request for a Gasification Unit.
M140003	MACT, NESHAP	DDDDD, JJJJJJ, PPPPP, T, ZZZZ.	Exemption of Halogenated Solvent Cleaning, Stationary RICE, and Institutional Boilers for Vehicle Facility.
M140004	MACT	UUU	Alternative Monitoring Method for Sulfur Dioxide Emissions During Emission Control Device Malfunctions or Down Time.
M140005	MACT	UUU	Alternative Monitoring Plan for Calculation of Flue Gas Flow Rate in Lieu of Direct Measurement.
M140007	NESHAP, NSPS	DDDDD, A, Db	Force Majeure Determination for a new biomass-fired cogeneration boiler.
Z120003	NESHAP	FF	Request for Clarification on Applicability to Sour Water Streams Managed Upstream of a Refinery Sour Water Stripper.
Z130002	NESHAP	JJJJJJ	Request for Clarification of Steam Boiler Exemption for Mixed Residential and Commercial Use.
Z130003	NESHAP	N	Request for Approval of the Use of Closed/Covered Electroplating and Anodizing Tanks in order to Satisfy Physical Barrier Requirements.
Z140001	MACT, NESHAP, NSPS	BBBBBB, Kb, R, WW	Alternative Monitoring Request for Use of Top-side in-service Inspection Methodology for Internal Floating Roof Storage Tanks.
Z140002	MACT, NESHAP	EEEE, GGGG	Regulatory Interpretation of Solvent Transfer Racks and Equipment for Vegetable Oil Production Plant.
Z140003	NESHAP, NSPS	IIII	Petition for Additional Testing Hours for an Emergency Generator.

Abstracts

Abstract for [1200009]

Q1: Does EPA consider, as force majeure, certain weather conditions that prevented initial stack tests from being conducted before the compliance deadline under 40 CFR part 60, subparts OOO and UUU, at a Cadre Material Products (Cadre) in Voca, Texas?

A1: Yes. EPA finds that certain events, such as an ice storm, may be considered, dependent upon the circumstances specific to each event, as force majeure under 40 CFR part 60 subpart A. The ice storm, and the resultant amount of time necessary to complete repairs to equipment damaged solely as a result of the weather event, is beyond the control of the company. EPA will grant a one-week extension.

Q2: Does EPA consider, as force majeure, certain contract disputes between the company and its contractor over production testing and plant operation at the same facility.

A2: No. EPA does not consider that this qualifies as a force majeure event since it was not beyond the control of the company. EPA will not grant an extension.

Abstract for [1200024]

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting the off gas vent stream from a continuous catalytic reformer (PtR–3) as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the ExxonMobil Beaumont Refinery located in Beaumont, Texas?

A: Yes. EPA determined that a monitoring exemption is appropriate for the vent stream combusted in the continuous catalytic reformer (PtR–3), and therefore, the AMP request is no longer needed, based on the process operating and monitoring data submitted by the company and in light of changes made to Subpart J on June 24, 2008 (73 FR 35866). EPA agreed that the vent stream combusted in the fuel gas combustion device (FGCD) is inherently low in sulfur, and thus, meets the exemption criteria in 40 CFR 60.105(a)(4)(iv)(C). EPA agreed that the FGCD is exempt from monitoring requirements of 40 CFR 60.l05(a)(3) and (4). If the sulfur content or process operating parameters for the vent stream change from representations made for the exemption determination, the company must document the changes, re-evaluate the vent stream characteristics, and follow the appropriate steps outlined in 60.105(b)(3)(i) through (iii). The exemption determination should also be referenced and attached to the facility's new source review and Title V permit for federal enforceability.

Abstract for [1200033]

Q: The Oklahoma Department of Environmental Quality (OK DEQ) has requested a determination on whether a fuel gas treatment unit at the Atlas Pipeline Mid-Continent Herron Compressor Station in Oklahoma is subject to NSPS Subpart KKK if it extracts heavy hydrocarbons from field gas prior to its use as a fuel for engines subject to 40 CFR part 60 subpart JJJJ, but does not sell the field gas?

A: Based on the information provided by OK DEQ, EPA has determined that a facility does not have to sell liquids to be considered a natural gas processing plant under 40 CFR part 60 subpart KKK, and there is no specific operating temperature criteria for a facility to be considered as engaged in the extraction of natural gas liquids. The only temperature criteria mentioned in 40 CFR part 60 subpart KKK is in the definition of equipment in light liquid service.

Abstract for [1200043]

Q: Does EPA approve an Alternative Monitoring Plan (AMP) for monitoring hydrogen sulfide (H2S) in lieu of installing a continuous emission monitoring system (CEMS) for a refinery truck loading rack off-gas vent stream combusted at a thermal oxidizer under 40 CFR part 60 subpart J at the Valero Refining Corpus Christi, Texas West refinery?

A: Yes. EPA conditionally approves Valero AMP, based on the description of the process vent stream, the design of the vent gas controls, and the H2S monitoring data furnished. Valero AMP approval is conditioned on following the seven step process detailed in EPA's guidance for Alternative Monitoring Plans for 40 CFR part 60 subpart J relative to monitoring the facility's proposed operating parameter limits (OPLs).

Abstract for [1200047]

Q: Does Kippur Corporation's El Paso, Texas Other Solid Waste Incinerator (OSWI), which is used to combust contraband, qualify for the exclusion from 40 CFR part 60 subpart EEEE or subpart FFFF under 40 CFR 60.2993(p), if the unit is owned and operated by a non-government (commercial) entity, but where a government agency representative maintains a supervisory and oversight role of handling of the contraband feed while the owner/operator's employees start and operate the incinerator?

A: No. EPA further clarified the exclusion of 40 CFR 60.2993(p) in the preamble to the OSWI final rule, published on December 16, 2005, to state that the exclusion applies only to goods confiscated by a government agency. In addition, the Ninth Circuit Court of Appeals has defined the term supervisor in the context of the definition of owner or operator provided in the Clean Air Act. The court held that substantial control is the governing criterion when determining if one is a supervisor. The Court elaborated that significant and substantial control means having the ability to direct the manner in which work is performed and the authority to correct problems. Based on review of the information provided, EPA did not consider USCBP to be an operator of the incinerator. The training requirements of 40 CFR 60.3014 for OSWI unit operators also demonstrate that EPA intended the operator of an OSWI incinerator be physically in control of the system or the direct supervisor of someone who is physically operating the incinerator. U.S. Customs and Border Protection (USCBP) is only in control of feeding the contraband to the incinerator, presumably for custody control, but not for any operative purpose. Since USCBP is not in control of the incinerator itself, the Kippur OSWI unit is not exempt and must comply with either 40 CFR part 60 subpart EEEE or subpart FFFF.

Abstract for [1200048]

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting a vent stream from a hydrogen plant's steam methane reformer (SMR) degassifier knockout drum as an inherently low-content sulfur stream under 40 CFR part 60 subpart J, at the Valero Corpus Christi East Plant (Valero) in Corpus Christi, Texas?

A: Yes. EPA determined that a monitoring exemption is appropriate for the vent stream, and EPA voided the AMP request based on the process and monitoring data provided, and in light of changes made to subpart J on June 24, 2008 (73 FR 35866). EPA agreed that the flare is exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent stream combusted in the flare is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the exemption in 40 CFR 60.105(a)(4)(iv)(C). If refinery operations change from representations made for this exemption determination, then Valero must document the change(s) and follow the appropriate steps outlined in 40 CFR 60.105(b)(3)(i) through (iii).

Abstract for [1200049]

Q: Does EPA approve the request from Domtar Paper Company (Domtar), LLC, in Plymouth, North Carolina to derate the capacity of a boiler (HFBI) to less than 250 mmBtu/hr in order that it will no longer be subject to 40 CFR part 60 subpart D?

A: No. EPA has determined that Domtar's proposed derate for coal firing procedure is not acceptable, as it does not meet EPA's criteria for derate of boilers based on the description in Domtar's request, as indicated to the North Carolina Department of Environment and Natural Resources. The proposed derate procedure is based only on changes to the fuel feed system and does not reduce the capacity of the boiler. Domtar indicates that they must maintain the ability to use hog fuel at a heat input greater than 250 million Btu/hr for HFB1 and cannot make changes to the induced draft fan to reduce the boiler capacity.

Abstract for [1200052]

Q1: The Alabama Department of Environmental Management (AL DEM) requests clarification of the initial monitoring requirements for pumps and valves for new process units subject to 40 CFR part 60 subpart VVa. Under 40 CFR part 60 subpart VVa, is a new facility required to initially monitor pumps and valves within 30 days of startup of a new process unit or within 180 days of startup of the process unit?

A1: The NSPS Subpart VVa requires initial monitoring of pumps and valves for a new process unit to be conducted within 30 days after the startup of a new process unit. Section 60.482–2a(a)(1) requires monthly monitoring to detect leaks from pumps in light liquid service. Section 60.482–7a(a) requires monthly monitoring to detect leaks from valves in gas/vapor service and in light liquid service. Further, § 60.482–1a(a) requires an initial compliance demonstration within 180 days of initial startup of the valve or pump, and does not provide a grace period during which a facility is exempt from the work practice standards of Subpart VVa and the requirement to conduct monthly monitoring of pumps and valves.

Q2: Under 40 CFR part 60 subpart VVa, what is the initiation of monthly monitoring for pumps and valves which do not begin service at the initial startup of a process unit but are placed in service over time?

A2: For both pumps and valves, 40 CFR part subpart VVa requires that monthly monitoring of the pump or valve is to begin within 30 days after the end of its startup period to ensure

proper installation. This requirement is addressed in 40 CFR 60.482–2a(a)(1) for pumps in light liquid service and in 40 CFR 60.482–7a(a)(2) for valves in gas/vapor service or light liquid service.

Abstract for [1200053]

Q: Does EPA approve an Alternate Monitoring Plan for an inherently low-sulfur gas stream from the Caustic Vent Degasser vented to a flare at the Marathon Petroleum Company LLC (MPC) in Robinson, Illinois?

A: Yes. EPA conditionally approves MPC's Alternate Monitoring Plan for the Caustic Tank Degasser vent to flare based on the process description and the data showing the low and stable H2S content of the stream. MPC will continue to monitor the NaOH (caustic strength) in the spent caustic wash streams in lieu of continuously monitoring this combined stream, and the proposed sampling schedule will be implemented quarterly until December 2013, and thereafter EPA requires sampling frequency on a biannual basis. The biannual sampling will be performed with a minimum of three months between the collections of the samples. If at any time the sample results from a single detector tube are equal to or greater than 81 ppm H2S, MPC must follow the procedures and notification requirements established in the EPA response letter.

Abstract for [1200056]

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting a vent stream from a cyclic reformer caustic scrubber in a process furnace as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the British Petroleum's Texas City, Texas refinery?

A: Yes. EPA determined the cyclic reformer caustic scrubber vent stream, and therefore the AMP request is no longer needed, based on the process operating parameters and monitoring data submitted by the company and in light of changes made to Subpart J on June 24, 2008 (73 FR 35866). EPA agreed that the process furnace is exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent stream combusted in the furnace is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the exemption criteria in 40 CFR 60.105(a)(4)(iv)(C). If it is determined that the stream is no longer exempt, continuous monitoring must begin within 15 days of the change, in accordance with 40 CFR 60.105(a)(4)(iv).

Abstract for [1200058]

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting vent streams from two continuous catalytic reformer unit lock hoppers in a flare as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the Chalmette Refining, Chalmette), Louisiana refinery?

A: Yes. EPA determined that a monitoring exemption is appropriate for the continuous catalytic reformer unit lock hopper vent streams, and EPA voided the AMP request based on the process operating parameters and monitoring data submitted by Chalmette and in light of changes made to subpart J on June 24, 2008 (73 FR 35866). EPA agreed that the flare is exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent streams combusted in the flare are inherently low in sulfur because they are produced in a process unit intolerant to sulfur contamination, and thus, meet the exemption criteria in 40 CFR 60.105(a)(4)(iv)(C). If Chalmette determines that the streams no longer meet the exempt criteria as a result of refinery operations change(s), then Chalmette must document the change(s) and must begin continuous monitoring within 15 days of the change, in accordance with 40 CFR 60.105(a)(4)(iv).

Abstract for [1200059]

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting a vent stream from an alkylation unit Merox disulfide separator in a reboiler heater as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the Chalmette Refining, Chalmette, Louisiana refinery?

A: Yes. EPA determined that a monitoring exemption is appropriate for the alkylation unit Merox separator vent stream, and therefore the AMP request is no longer needed, based on the process operating parameters and monitoring data submitted by Chalmette and in light of changes made to subpart J on June 24, 2008 (73 FR 35866). EPA agreed that the reboiler heater is exempt from monitoring requirements of 40 CFR 60.l05(a)(3) and (4). The vent stream combusted in the heater is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the exemption criteria in 40 CFR 60.105(a)(4)(iv)(C). EPA also clarified that, if refinery operations change such that the sulfur content for the vent stream changes such that it no longer meets the exemption criteria, continuous monitoring must begin within 15 days of the change, in accordance with 40 CFR 60.105(a)(4)(iv).

Abstract for [1200064]

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting the vent stream from a continuous catalytic reformer unit lock hopper in two reformer heaters as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the ExxonMobil's Beaumont, Texas refinery?

A: Yes. EPA determined that a monitoring exemption is appropriate for the continuous catalytic reformer unit lock hopper vent stream, and EPA voided the AMP request based on the process operating parameters and monitoring data submitted by ExxonMobil and in light of changes made to subpart J on June 24, 2008 (73 FR 35866). Based on review of the information provided, EPA agreed that the reformer heaters are exempt from monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent stream combusted in the heaters is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the exemption in 40 CFR 60.105(a)(4)(iv)(C). If it is determined that the stream is no longer exempt, continuous monitoring must begin within 15 days of the change, in accordance with 40 CFR 60.105(a)(4)(iv).

Abstract for [1200074]

Q: Does EPA approve an exemption in lieu of an Alternative Monitoring Plan (AMP) for combusting the off gas vent stream from a hydrogen plant pressure swing adsorption (PSA) unit in a flare as an inherently low-sulfur stream under 40 CFR part 60 subpart J, at the Valero Refining East Refinery in Corpus Christi, Texas?

A: Yes. EPA determined that a monitoring exemption is appropriate for the hydrogen plant PSA vent stream, and EPA voided the AMP request based on the process operating parameters and monitoring data submitted by Valero and in light of changes made to subpart J on June 24, 2008 (73 FR 35866). Based on review of the information provided, EPA agreed that the flare is exempt from the monitoring requirements of 40 CFR 60.105(a)(3) and (4). The vent stream combusted in the flare is inherently low in sulfur because it is produced in a process unit intolerant to sulfur contamination, and thus, meets the exemption in 40 CFR 60.105(a)(4)(iv)(C). If it is determined that the vent stream is no longer exempt, continuous monitoring must begin within 15 days

of the change, in accordance with 40 CFR 60.105(a)(4)(iv).

Abstract for [1200080]

Q: Does EPA approve the Alternative Monitoring Plans (AMPs) for monitoring hydrogen sulfide (H2S) in lieu of installing a continuous emission monitoring system (CEMS) for three sour water tank off-gas vent streams, subject to 40 CFR part 60 subpart J, that are combusted in two sulfur recovery unit tail gas incinerators at the Valero Refining facility in Houston, Texas?

A: No. EPA does not approve Valero's proposed AMPs for the off-gas vent streams from the three sour water tank off-gas vent streams because the necessary fuel gas system and stream sampling data was not provided to demonstrate that the fuel gas streams are sufficiently low in sulfur content or to establish appropriate alternative monitoring methods, parameters, and frequencies to ensure inherently low and stable H2S content of the off-gas vent streams to be combusted at the incinerators.

Abstract for [1200086]

Q: Does EPA approve a waiver of the initial performance test under the NSPS for Non-metallic Mineral Processing Plants for the Emission Unit PO 14 at the Carmeuse Industrial Sands, Millwood Operation in Howard, Ohio? The Emission Unit PO 14 is operated infrequently and for short durations, and the plant lacks testing facilities.

A: Yes. EPA approves this waiver request because the facility is operated for small amounts of time per day, which is not sufficient to implement a Method 5 or 17 performance test meeting the requirements in this standard. However, EPA does not consider a lack of testing facilities as a valid reason to waive a test and points out that construction of a source subject to testing requirements in a manner that prevents it from being tested might be considered circumvention under the General Provisions. In addition, EPA approves all determinations on a case-by-case basis and is not necessarily bound by previous determinations.

Abstract for [1200088]

Q1: Does EPA approve the continued operation of several gas wells at the closed Willowcreek Landfill in Atwater, Ohio without expansion of the gas collection system, despite instances of positive pressure and oxygen exceedance under the NSPS for Landfills?

A1: Yes. EPA approves the continued operation of the Willowcreek wells without expansion of the collection system because they are showing signs of declining gas quality and expansion of the system is expected to be of little to no value.

Q2: Does EPA approve the continued operation of other wells that in the future may experience the same conditions at the Willowcreek Landfill?

A2: EPA does not provide a blanket approval for all future wells experiencing the same conditions. Expansion of this alternative monitoring approval will require subsequent requests.

Abstract for [1200093]

Q: Are the emissions from AIRS ID 060 and 079 from dust collectors at the top of enclosed conveyor belt transfer points ''process fugitive emissions'' subject to the standard outlined in 40 CFR 60.382(b) or ''stack emissions'' subject to the standards in 40 CFR 60.382(a) of NSPS Subpart LL, which are located at the Climax Molybdenum facility in Leadville, CO?

A. The EPA determines that the fugitive emissions from the dust collectors utilized by AIRS ID 060 and 079 are ''stack emissions,'' as these are being released through a ''stack, chimney, or flue'' and will be ''released to the atmosphere.'' In addition, the process fugitive emission standard applies to ''emissions from an affected facility that are not collected by a capture system.'' Therefore, the emissions from the dust collectors are not ''process fugitive emissions'' since these emissions are being captured and controlled and are not emissions that have escaped control.

Abstract for [1200094]

Q: Does EPA approve Elk River Landfill, Incorporated's alternative monitoring request under 40 CFR 60.753(c) of the Landfill NSPS, Subpart WWW, for a variance of the operating temperature for five gas wells at Elk River Landfill in Elk River, Minnesota?

A: Yes. EPA approves Elk's request for an alternative operating temperature for the five gas wells. Based on the supporting information, the higher operating gas temperatures do not significantly inhibit anaerobic decomposition by killing methanogens and do not cause subsurface landfill fire at the site. Therefore, EPA approves Elk River Landfill's request for an operating temperature of 155 °F for gas well numbers EREW35R2, EREW0042, EREW045R, EREW0066, and ERHC0010.

Abstract for [1400001]

Q: Does EPA approve a request from Advanced Disposal Service (ADS) to use an alternate span value of 50 parts per million by Volume (ppmV) in lieu of 500 ppmV required by 40 CFR 60.48b(e)(2) for the nitrogen oxide continuous emission monitors (CEMs) on each of two process heaters at the Rolling Hills Landfill (RHLF) in Buffalo, Minnesota?

A: Yes. EPA approves the use of the alternate span value for the two process heaters' CEMs. EPA concludes that the span will be more appropriate for the typical range of emission concentrations and that the span will yield more accurate measurement(s) during normal operating conditions.

Abstract for [1400002]

Q. Do the Stationary Reciprocating Internal Combustion Engines (RICE) powering floodwater pumps and associated generators at the U.S. Army Corps of Engineers (USACE), W.G. Huxtable Pumping Plant, Lee County, Arkansas, meet the definition of an institutional emergency RICE under 40 CFR part 63, subpart ZZZZ?

A. Yes. EPA determines that the RICE SN–01 through SN–13 pumps and associate generators meet the definition of institutional emergency at 40 CFR 63.6675 because these are located at an area source facility for HAPs and are only used when significant flooding occurs. Specifically, pumping does not begin until the water level on the downstream (Mississippi River) side of the facility is higher than the water on the upstream side, a condition that would only happen in the case of significant flooding. Also, these engines are located at a facility with a North American Industry Classification System (NAICS) code of 924110. This NAICS code is on the list of codes that identifies the types of facilities that would be considered residential, commercial, or institutional, provided as guidance by the EPA after the RICE NESHAP was published. Therefore, the engines are existing institutional emergency stationary RICE located at an area source of hazardous air pollutant (HAP) emissions, not subject to the RICE NESHAP per the exemption in 40 CFR 63.6585(f)(3).

Abstract for [1400004]

Q1: Does EPA concur that design capacity for municipal solid waste (MSW) of the Advanced Disposal Service (ADS) Rolling Hills Landfill (RHLF) in Buffalo, Minnesota, is less than 2.5 million megagrams (2.7 million tons) and 2.5 million cubic meters (3.3 million cubic yards) for purposes of NSPS Subpart WWW rule?

A1: No. EPA concludes that the design capacity of the ADS RHLF is greater than 2.5 million megagrams and

2.5 million cubic meters based on the definition of ''MSW landfill'' and of ''design capacity'' in Subpart WWW. EPA concludes that the RHLF's MSW landfill consists of the entire disposal facility in a contiguous geographical space. EPA calculated the RHLF's design capacity as the sum of the design capacity for each waste disposal area in the most recent permit, which lists the authorized waste disposal activities.

Q2: Are the Landfill NSPS applicability thresholds based not only on physical volumes or masses but also upon the state regulatory environment, recycling mandates, and intercounty solid waste planning directives?

A2: EPA determines that the state restrictions and limitations on the types of waste that the RHLF has been allowed to accept cannot reduce the design capacity below the Landfill NSPS applicability thresholds. The NSPS does not distinguish nonmethane organic compounds (NMOC) emissions generated from MSW and those generated from non-MSW. Consequently, even though restrictions on the types of waste that the RHLF has been allowed to accept may be federally enforceable under the federal SWDA, EPA concludes that ADS may not exclude the volume and mass of non-MSW from the calculation of the RHLF's design capacity.

Abstract for [1400006]

Q: Can EPA approve an Alternative Monitoring Plan (AMP) for Envent Corporation to conduct monitoring of hydrogen sulfide (H2S) emissions, in lieu of installing a continuous emission monitoring system (CEMS), when performing tank degassing and other similar operations controlled by portable, temporary thermal oxidizers, at refineries in Region 6 States that are subject to NSPS subparts J or Ja?

A: Yes. EPA conditionally approved the AMP based on the description of the process, the vent gas streams, the design of the vent gas controls, and the H2S monitoring data furnished. EPA included proposed operating parameter limits (OPLs) and data which the refineries must furnish as part of the conditional approval. The approved AMP applies only to similar degassing operations conducted by ENVENT at refineries in EPA Region 6.

Abstract for [1400007]

Q. Does EPA approve the Holly Frontier Corporation, Holly Refining & Marketing Company—Woods Cross's (Holly's) alternative monitoring plan (AMP) for monitoring opacity from the fluid catalytic cracking unit (FCCU) regenerator since moisture in the wet gas scrubbers to the FCCU causes interference with opacity monitors, making the results unreliable?

A. Yes. EPA conditionally approves Holly's AMP request to monitor alternative operating parameters in its wet gas scrubber since these ensure optimum collection efficiency for particulates. The Holly AMP approval is conditional on maintaining liquid flow to the nozzles in the absorber tower vessel and the filtering modules, and ensuring a minimum pressure drop across the filtering modules.

Abstract for [1400008]

Q: Does EPA approve the alternate compliance remedies to correct the surface scan emissions exceedances that occurred during the surface emissions monitoring (SEM) event at five designated locations at the Settle's Hill Recycling and Disposal Facility (Settle's Hill) and Midway Landfill in Batavia, Illinois?

A: Yes. EPA conditionally approves this request for alternative compliance remedies that involve installing dewatering pumps in several gas extraction wells in the vicinity of the exceedances, further enhancement of the landfill gas collection and control system (GCCS), further enhancement of the landfill cap with the placement of additional soil cover and corresponding schedule for locations designated as EX–1, –2, –3, –5, and –6 at the Midway Landfill and Settler's Hill. The condition for approval requires that the remedies eliminate methane exceedances at the locations listed above. If such is not the case in subsequent SEM, beginning December 6, 2012, more aggressive measures will be required to reduce surface emissions at both the Midway Landfill and Settler's Hill to ensure compliance.

Abstract for [1400009]

Q: Does EPA approve a higher operating value for oxygen concentration under NSPS Subpart WWW for a well collector at the Roxana Landfill, Incorporated facility located in Roxana, Illinois?

A: No. EPA does not approve Roxana's request because the criteria for approval of a higher operating value for oxygen concentration at Roxana's Collector Well 0TD1 under the provisions in 40 CFR 60.753(c) of NSPS Subpart WWW has not been met. In order to approve a higher oxygen operating value, 40 CFR 60.753(c) requires, ''data that shows the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens.''

Abstract for [1400010]

Q: Does EPA approve Flint Hills Resources' request to set the span value for the nitrogen oxide continuous emission monitors on each of two process heaters 25H1 and 25H3 at 50 parts per million by Volume (ppmV) rather than 500 ppmV as required by 40 CFR 60.48b(e)(2)?

A: Yes. EPA concludes that the span will be more appropriate for the typical range of emission concentrations and that the span will yield more accurate measurements during normal operating conditions.

Abstract for [1400011]

Q: Does EPA approve an exemption in lieu of Alternative Monitoring Plan (AMP) for monitoring hydrogen sulfide (H2S) rather than installing a continuous emission monitoring system (CEMS) for a refinery caustic regeneration unit off-gas vent stream combusted at two process furnaces under 40 CFR part 60 subpart J at the ExxonMobil refinery in Baton Rouge, Louisiana?

A: Yes. EPA conditionally approves the exemption under the seven step process detailed in EPA's guidance for Alternative Monitoring Plans for 40 CFR part 60 subpart J, based on the description of the process vent stream, the design of the vent gas controls, and the H2S monitoring data furnished. EPA included the facility's proposed operating parameter limits (OPLs), which the facility must continue to monitor, as part of the conditional approval.

Abstract for [1400012]

Q: Does EPA approve an Alternative Monitoring Plan (AMP) for Gem Mobile Services to conduct monitoring of hydrogen sulfide (H2S) emissions, in lieu of installing a continuous emission monitoring system (CEMS), when performing tank degassing and other similar operations controlled by portable, temporary thermal oxidizers, at refineries located in EPA Region 6 states that are subject to NSPS Subparts J or Ja?

A: Yes. EPA conditionally approves the AMP, based on the description of the process, the vent gas streams, the design of the vent gas controls, and the H2S monitoring data furnished. EPA included proposed operating parameter limits (OPLs) and data which the refineries must furnish as part of the conditional approval. The approved AMP is only for degassing operations conducted at refineries in EPA Region 6.

Abstract for [1400013]

Q: Does EPA allow an alternative compliance timeline for landfill gas extraction well at the American Disposal Services of Illinois, Inc. (ADSI)—Livingston Landfill facility located in Pontiac, Illinois?

A: No. EPA does not approve the request for an alternative compliance timeline for correcting the operational parameter exceedance at the ADSI's landfill gas extraction well LIV–GW22 (GW22). EPA did not approve an alternative compliance timeline because the request was for a potential situation that may or may not happen and may or may not cause a delay in construction. Such approval will only be granted if ADSI can establish that forces beyond its control prevent on-time compliance.

Abstract for [1400014]

Q: Does EPA approve a request to use a bag leak detection (BLD) system in lieu of continuous opacity monitoring (COM) or daily Method 9 visible emissions (VE) readings, as required by 40 CFR part 60, subpart UUU for monitoring the new thermal sand reclamation system being installed at the Thyssenkrupp Waupaca, Inc. (Waupaca) foundry (Plant I) in Wisconsin?

A: Yes. EPA conditionally approves the use of the BLD system at the new sand cooler for monitoring in lieu of a COM or daily VE readings to comply with subpart UUU rule. This approval is conditioned upon the BLD system being subject to the same installation, operation, maintenance, monitoring, recordkeeping, and notification provisions of 40 CFR part 63 subpart EEEEE, rule applicable to Waupaca since it is an iron and steel foundry.

Abstract for [1400015]

Q: Does EPA approve a request to use a bag leak detection (BLD) system in lieu of continuous opacity monitoring (COM) or daily Method 9 visible emissions (VE) readings, as required by 40 CFR part 60 subpart UUU for monitoring the new thermal sand reclamation system being installed at the Thyssenkrupp Waupaca, Inc. (Waupaca) foundry (Plants 2 and 3) in Wisconsin?

A: Yes. EPA conditionally approves use of the BLD system at the new sand cooler for monitoring in lieu of a COM or daily VE readings. This approval is conditioned upon the the BLD system being subject to the same installation, operation, maintenance, monitoring, recordkeeping, and notification provisions of 40 CFR part 63 subpart EEEEE, rule applicable to Waupaca since it is an iron and steel foundry.

Abstract for [1400017]

Q: Does the EPA approve a petition for approval of operating parameter limits (OPLs) in lieu of installing a wet scrubber, an initial performance test plan, and an initial relative accuracy test audit (RATA) protocol for a continuous emission monitoring system (CEMS) at a dual chamber, commercial incinerator which thermally destroys contraband for U.S. Customs and Border Protection (CBP) at the Southwest Border Incineration (SWBI) facility located in McAllen, Texas, and is subject to regulation as an ''other solid waste incineration'' (OSWI) unit under 40 CFR part 60 subpart EEEE?

A: Yes. EPA conditionally approves the SWBI's petition for establishing specific OPLs to be monitored, initial performance test plan, and the CEMS RATA protocol based on the information submitted to EPA since the rule requirements at 40 CFR 60.2917(a) through (e) and 40 CFR 60.2940(a) through (d) were met. Final approval of SWBI's petition will be based on the OPL range values and other conditions that are established from the results of the performance testing and the CEMS RATA.

Abstract for [1400018]

Q1. Is Coater A, part of a coating line that manufactures pressure sensitive tape and labels at the 3M print station facility in Hutchinson, Minnesota, which applies hot melt coating with zero potential VOC emissions and commenced construction after December 30, 1980, subject to 40 CFR part 60 subpart RR?

A1. Yes. Coater A meets the applicability criteria of affected facility in both 40 CFR 60.440(a) and (c), and is therefore subject to 40 CFR part 60 subpart RR. Since Coater A applies coatings with zero potential VOC emissions, it is not subject to the emission limits of 40 CFR 60.442(a). However, it is subject to the requirements of all other applicable provisions of 40 CFR part 60 subpart RR.

Q2. Is Coater B at 3M print station, which coats webs, including paper, film, and metal at two coating application stations, each followed by a drying oven, and a print station with a small oven for making product markings, and was installed in 1985 at the 3M facility in Rockland, Massachusetts, subject to 40 CFR part 60 subpart TT?

A2. Yes. Coater B meets the definitions in 40 CFR part 60 subpart TT of two affected facilities, a prime coat operation and a finish coat operation, and is thus subject to the rule requirements.

Q3. Is Coater B, a coating line which is used in the manufacture of pressure sensitive tape and label materials and was installed in 1985, also subject to 40 CFR part 60 subpart RR?

A3. Yes. Coater B meets the criteria in 40 CFR 60.440 and is, therefore, a 40 CFR part 60 subpart RR affected source subject to the rule requirements.

Q4. Is the 3M print station part of 40 CFR part 60 subpart TT or subpart RR affected facility?

A4. The print station is an affected facility under both 40 CFR part 60 subpart TT and 40 CFR part 60 subpart RR. Under subpart TT, the print station is an affected facility, because it meets the definition of an application system applying an organic coating in 40 CFR 60.461. The print station is also an affected facility under 40 CFR part 60 subpart RR, because it meets the definition of a precoat coating applicator in 40 CFR 60.441(a).

Q5. How would the analysis and conclusions for 40 CFR part 60 subpart RR change if the VOC input to the coating line had never exceeded 45 Mg VOC in any 12-month period?

A5. EPA finds this question outside the scope of an applicability determination, because it is hypothetical and contrary to the stated facts. However, in general, a facility that does not input to the coating process more than 45 MG (50 tons) of VOC per 12-month period is not subject to the emission limits in 40 CFR part 60 subpart RR.

Q6. When and how do the emissions limits of 40 CFR part 60 subpart TT and/or 40 CFR part 60 subpart RR apply?

A6. EPA finds this question outside the scope of an applicability determination, because it does not address applicability. However, in general, an NSPS affected facility is subject to the requirements of a rule at all times while engaged in activity that causes it to meet the definition of an affected facility. So, a 40 CFR part 60 subpart TT affected facility is subject to the rule while engaged in the activities of a metal coil surface coating operation. Similarly, a 40 CFR part 60 subpart RR affected facility is subject to the rule while engaged in the manufacture of pressure sensitive tape and labels. If a facility is subject to more than one NSPS, the facility must demonstrate compliance with each rule (i.e., keep records and calculate the emissions for activities in each applicable category).

Q7. Is Coater C, a major source of HAP emissions that applies coatings to

several types of webs, including paper, film, and metal, and was installed in 1963 at the 3M facility in Hartford City, Indiana, subject to 40 CFR part 63 subpart SSSS?

A7. Yes. Coater C is an existing affected source under 40 CFR part 63 subpart SSSS, because it coats metal coil as defined in 40 CFR 63.5110 and was constructed before July 18, 2000. It does not qualify for the exemption in 40 CFR 63.5090(b)(2) because more than 15 percent of the metal coil coated, based on surface area, is greater than 0.15 millimeter (0.006 inch) thick.

Q8. Is Coater C located at the 3M facility in Hartford City, Indiana, also subject to 40 CFR part 63, subpart JJJJ rule requirements?

A8. No. Coater C is not subject to 40 CFR part 63 subpart JJJJ requirements, as long as it meets the 40 CFR part 63 subpart SSSS rule requirements. In 40 CFR part 63 subpart SSSS, owners/operators of facilities are provided the option that, if they are subject to both subparts, they can choose to comply with the requirements of 40 CFR part 63 subpart SSSS, and have that constitute compliance with 40 CFR part 63 subpart JJJJ, rather than complying with the requirements of both rules.

Q9. Is the 3M print station of Coater C an affected source under both 40 CFR part 63 subpart SSSS and 40 CFR part 63 subpart JJJJ?

A9. Yes. The print station of Coater C meets the applicability criteria of both 40 CFR part 63 subpart SSSS and 40 CFR part 63 subpart JJJJ. However, an owner/operator can choose to comply with the requirements of 40 CFR part 63 subpart SSSS and have that constitute compliance with 40 CFR part 63 subpart JJJJ. The print station meets the applicability criteria of 40 CFR part 63 subpart SSSS, because the inks applied by the print station are included in the definition of a coating. This coating is applied by the print station which meets the definition of a work station that operates on a coil coating line. For 40 CFR part 63 subpart JJJJ, the inks applied at the print station of Coater C meet the definition of a coating material in 40 CFR 63.3310 and are applied by the print station which meets the definition of a work station and operates on a web coating line.

Q10. When and how do the emissions limits of 40 CFR part 63 subpart SSSS and/or 40 CFR part 63 subpart JJJJ apply to 3M print station?

A10. EPA finds this question outside the scope of an applicability determination, because it does not question applicability. However, in general, a 40 CFR part 63 subpart SSSS affected source is subject to the rule at all times while engaged in activity that causes the facility to meet the definition of an affected facility. If the owner/operator does not choose to comply with 40 CFR part 63 subpart SSSS, or the affected facility is engaged in activities that do not meet the applicability criteria of 40 CFR part 63 subpart SSSS, then the affected facility could be subject to 40 CFR part 63 subpart JJJJ. The affected facility would be subject to 40 CFR part 63 subpart JJJJ only while engaging in activities that meet the definition of a 40 CFR part 63 subpart JJJJ affected source.

Q11. Is Coater D, located at the 3M facility in Hutchinson, Minnesota subject to 40 CFR part 63 subpart KK? The facility is a major source of HAP emissions and it is in a collection of web coating lines that are an existing affected source under MACT subpart JJJJ. Also present at the facility is a collection of wide-web flexographic printing presses which are an existing affected source under MACT Subpart KK. A flexographic print station capable of printing onto webs that are greater than 18 inches wide was added to Coater D and more than 5 percent of all materials applied onto the web of Coater D in a month occur at the flexographic print station.

A11. Yes. Coater D meets the definition of a wide-web flexographic press that is a Subpart KK affected source, unless it qualifies for the exclusion provided in 40 CFR 63.821(a)(2)(ii). Coater D does not qualify for the exclusion because more than 5 percent of the mass of all materials applied by Coater D is applied by the wide-web flexographic print station.

Q12. Is Coater D a 40 CFR part 63 subpart JJJJ affected source?

A12. No. Coater D meets the MACT Subpart JJJJ definition of a web coating line in 40 CFR 63.3310; however, 40 CFR 63.3300(b) excludes any web coating line that is a ''wide-web flexographic press under Subpart KK.'' Since Coater D is included in a 40 CFR part 63 subpart KK affected source, it is not a 40 CFR part 63 subpart JJJJ affected source.

Q13. How does the analysis change if in a single month (or permanently) the total mass of materials applied by the print station of Coater D is no more than 5 percent of the total mass of materials applied?

A13. EPA believes that 3M is asking if Coater D's status as a 40 CFR part 63 subpart KK affected source changes if the mass of material applied by the print station in a month subsequently falls below 5 percent of the total mass of materials applied by Coater D. Coater D remains a 40 CFR part 63 subpart KK affected source even if the mass of material applied by the print station in a month subsequently falls below 5 percent of the total mass of materials applied by Coater D. The word ''never'' in the exclusion at 40 CFR 63.821(a)(2)(ii)(A) means that once the total mass of materials applied in any month exceeds 5 percent of the total mass of material applied in that month, the coating line continues to be a 40 CFR part 63 subpart KK affected source, even if percentage subsequently falls below 5 percent.

Q14. When and how do the emissions standards of the applicable MACT rules apply to Coater D?

A14. The EPA finds this question outside the scope of an applicability determination, because it does not question applicability. Also, EPA interprets the question as: (1) Do the emission standards apply to the entire coating line or just to the flexographic print station? and (2) If the standards apply to the entire line, do they continue to apply even when the flexographic print station is not operating? In general, the emission standards apply to the entire coating line, not just to the flexographic print station, because the print station is part of the flexographic press in 40 CFR 63.822(a) which meets the definition of an affected source under 40 CFR part 63 subpart KK. The emissions standards apply while any part of the coating line is operating even if the flexographic print station is not operating.

Q15. Does the analysis change if the total mass of materials applied by the print station of Coater D has never exceeded in a month 5 percent of the total mass of materials applied by Coater D overall?

A15. The EPA finds this question outside the scope of an applicability determination as it does not question applicability and is contrary to the stated facts. However, in general, Coater D, including the wide-web printing station, meets the definition of a web coating line in 40 CFR 63.3310 and is, therefore, a subpart JJJJ affected source. The section 40 CFR 63.3300(b) excludes any web coating line that is an affected source under 40 CFR part 63 subpart KK. However, an owner/operator could choose exclude Coater D from 40 CFR part 63 subpart KK if the sum of the total mass of materials applied by print stations in any month never exceeded 5 percent of the total mass of materials applied by Coater D in that same month. If the owner/operator chooses to exclude Coater D from 40 CFR part 63 subpart KK, it would remain a 40 CFR part 63 subpart JJJJ affected source. If

not excluded, it would be a subpart KK affected source.

Q16. Would Coater D be a 40 CFR part 63 Subpart KK or 40 CFR part 63 subpart JJJJ affected source if the print station were decommissioned or removed from the coating line?

A16. The EPA finds this question outside the scope of an applicability determination. It is hypothetical and does not question applicability. To answer the question, we would need more information on which coating lines remain in operation. However, in general, upon decommissioning or removing the print station, Coater D would no longer meet the criteria for being a wide-web flexographic printing press and, therefore, would no longer be a subpart KK affected source. At that point, Coater D would be a subpart JJJJ affected source as it would no longer qualify for the exclusion in 40 CFR 63.3300(b).

Q17. If an additional web coating line is constructed at the Springfield facility will it be subject to 40 CFR part 63 subpart JJJJ?

A17. The EPA finds this question outside the scope of an applicability determination, because it is hypothetical and does not have actual facts to address applicability. However, in general, 40 CFR part 63 subpart JJJJ, in 40 CFR 63.3300, defines an affected source as: ''the collection of all web coating lines at your facility.'' Therefore, if a facility is subject to 40 CFR subpart JJJJ, all web coating lines, new or existing, at that facility would be subject to the requirements of the subpart.

Q18. Are the components which are directly associated with Rack A at the 3M manufacturing facility in Hutchinson, Minnesota, while it is being used to unload solvent from Truck A into Tank A, part of an [organic liquid distribution] OLD and/or an miscellaneous coating manufacturing (MCM) affected source? Tank A at the facility is a bulk solvent storage tank where the solvent contains 5 percent weight or more of the organic HAP listed in Table 1 of 40 CFR 63 subpart EEEE. The solvent in Tank A is used exclusively to manufacture coatings and all coatings manufactured at the facility are used exclusively by the coating lines of the facility. Truck A is a tank truck that delivers the solvent to Tank A, and Rack A is a transfer rack that is used to unload the solvent from Truck A into Tank A.

A18. Rack A is a 40 CFR part 63 subpart EEEE affected source when it is being used to unload Truck A because Truck A contains organic liquid (as defined in 40 CFR part 63 subpart EEEE). Therefore, the equipment leak components directly associated with Rack A are 40 CFR part 63 subpart EEEE affected sources when Rack A is being used to unload solvent from Truck A into Tank A. The section 40 CFR part 63 subpart EEEE was written specifically to regulate the distribution of liquids containing 5 percent by weight or more of organic HAP and requires a commensurate level of control. By comparison, 40 CFR part 63 subpart HHHHH was written to regulate liquids with a lower concentration of organic HAP. As a result, the emission limits for 40 CFR part 63 subpart EEEE are more stringent than those in 40 CFR part 63 subpart HHHHH. Because of this different level of stringency, the EPA believes that the facility is more properly subject to 40 CFR part 63 subpart EEEE because the solvent distributed by the facility has 5 percent weight or more of organic HAP, even though the liquid is used to manufacture coatings.

Q19. Are any components directly associated with Truck A, while Truck A is unloading solvent into Tank A, part of an OLD and/or an MCM affected source?

A19. Any equipment leak components directly associated with Truck A are part of an OLD affected source while Truck A is unloading solvent into Tank A. Because the equipment leak components directly associated with Truck A are part of an OLD affected source, they cannot be part of an MCM affected source.

Q20. Is Rack A, while it is being used to unload solvent from Truck A into Tank A, part an OLD and/or an MCM affected source?

A20. Rack A is part of an OLD affected source while it is being used to unload solvent from Truck A into Tank A. Because Rack A is part of an OLD affected source, it cannot be part of an MCM affected source.

Q21. Is Truck A, while unloading solvent into Tank A, part of an OLD and/or an MCM affected source?

A21. Truck A is part of an OLD affected source while unloading solvent into Tank A. Because Truck A is part of an OLD affected source, it cannot be part of an MCM affected source. Also, transport vehicles are not included in the MCM definition of affected sources.

Q22. If either Truck A and/or Rack A are part of an MCM affected source, does the exclusion of affiliated operations at 40 CFR 63.7985(d)(2) affect how the requirements of 40 CFR part 63 subpart HHHHH apply?

A22. Neither Truck A nor Rack A are part of an MCM affected source while Rack A is being used to unload solvent from Truck A to Tank A.

Abstract for [1400020]

Q: Does EPA allow an alternative remedy and corresponding schedule to address methane exceedances above 500 PPM for a landfill gas extraction well at the Settler's Hill Recycling and Disposal Facility (Settler's Hill)/Midway Landfill (Midway) facility located in Batavia, Illinois, subject to the New Source Performance Standards (NSPS) for Municipal Solid Waste Landfills, 40 CFR part 60, subpart WWW?

A: EPA approves the proposed alternative remedy to regrade and compact the clay patch in the area near landfill gas extraction well Midway EX–2, and to import and compact an additional foot of clean clay in that same area. EPA understands that the remedy was carried forth, surface emission monitoring was performed, and no methane exceedances were detected.

Abstract for [A140001]

Q1: The Missouri Department of Natural Resources seeks EPA clarification on whether the 1991 Applicability Determination Index (ADI) document (ADI Number C112) represent EPA's current position on analysis of bulk for asbestos pursuant to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos?

A1: Yes. The 1991 response for analysis of bulk under the asbestos NESHAP represents EPA's current position. A minimum of three slide mounts should be prepared and examined in their entirety by Polarized Light Microscopy (PLM) to determine if asbestos is present. If the amount by visual estimation appears to be less than 10 percent, the owner and/or operator ''may (1) elect to assume the amount to be greater than 1 percent and treat the material as regulated asbestos-containing material or (2) require verification of the amount by point counting.'' If a result obtained by point count is different from a result obtained by visual estimation, the point count result will be used.

Q2: Do the EPA interpretations contained in ADI Number C112 extend to non-friable materials that have been or will be rendered into Regulated Asbestos Containing Materials (RACM) by the forces acted on it?

A2: Yes. EPA determined that the requirement for point counting extends to non-friable materials that have been or will be rendered into RACM.

Q3: Would the EPA consider Transmission Electron Microscopy (TEM) analysis as being equally or more effective than Polarized Light

Microscopy (PLM) point counting and an acceptable substitute to PLM point counting?

A3. Yes. In a **Federal Register** notice published on August 1, 1994, at 59 FR 38970, EPA announced that TEM analysis is more capable of producing accurate results than PLM, and thus serves as a preferred substitute to PLM point counting.

Abstract for [A140002]

Q1: Are specific maintenance activities on high voltage electric transmission towers mentioned by URS Corporation facility in San Francisco, California, considered demolitions or renovations under the Asbestos NESHAP, 40 CFR part 61, subpart M?

A1: Based on the provided descriptions, EPA finds that the maintenance activities URS listed in the request are renovations under 40 CFR part 61, subpart M because the activities involve the replacement of lattice extensions and tower legs and not the permanent dismantling of the electrical transmission tower.

Q2: For the described listed renovations, are notifications required for unpainted, galvanized steel?

A2: No. Notifications are not required under the asbestos NESHAP if the owner and/or operator has thoroughly inspected the structure and, (1) determined that the work on the structure is a renovation operation and, (2) that the regulatory threshold amount of regulated asbestos-containing material (RACM) will not be met.

Q3: Would the 15 years of sampling and thousands of sampling results showing non-detection of RACM be sufficient to support no further sampling of towers for RACM?

A3: No. EPA encourages representative sampling of various building materials that are part of a renovation or demolition operation, because such testing enables the owner and/or operator to identify and manage which building materials must be handled in accordance with the asbestos NESHAP. Relying solely on historical analysis and visual inspections may not provide the owner/operator with definitive knowledge, as to whether a specific tower was ever painted with asbestos-containing paint.

Abstract for [M110009]

Q: Does 40 CFR part 63, subpart XXXXXX apply to the metal processing operations at DePuy Orthopedics, Inc. in Raynham, MA (DePuy), which manufactures a broad range of orthopedic solutions, including hip and knee replacement components and operating room products?

A: No. EPA has determined that DePuy is not subject to subpart XXXXXX because it is not primarily engaged in manufacturing products in one of the nine metal fabrication and finishing source categories listed in section 63.11514(a) and Table 1 of the regulation.

Abstract for [M110010]

Q: Do the diesel engines operated at Massachusetts Water Resources Authority (MWRA) facilities in Cambridge, Massachusetts fit the definition of ''emergency engines'' under 40 CFR part 63 subpart ZZZZ?

A: No. EPA has determined that the engines operated at MWRA's facilities do not meet the definition of emergency stationary for purposes of 40 CFR part 63 subpart ZZZZ, because these engines operate during typical large rainfall events and not only during emergencies or floods. However, the engines must meet the requirements of 40 CFR part 63 subpart ZZZZ applicable to non-emergency engines.

Abstract for [M110011]

Q: Are the precious metals melting operations at Morgan Mill Metals in Johnston, Rhode Island, subject to 40 CFR part 63, subpart TTTTTT?

A: No. EPA has determined that because Morgan Mill Metals only produces precious metal-bearing products and does not produce brass, bronze, or zinc ingots, bars, blocks or metal powders, it does not operate a secondary nonferrous metals processing facility as defined in subpart TTTTTT.

Abstract for [M110012]

Q: The New Hampshire Department of Environmental Services (NH DES) seeks clarification on whether a used wood-fired boiler installed at Pleasant View Gardens (PVG) in Loudon, New Hampshire, is an existing, new, or reconstructed source under 40 CFR part 63 subpart JJJJJJ?

A: EPA determines that PVG's wood-fired boiler is an existing affected source under 40 CFR part 63 subpart JJJJJJ because the boiler was constructed prior to June 4, 2010, the effective date of the rule, and the removal and reinstallation of the boiler did not trigger reconstruction as defined at 40 CFR 63.2. This applicability determination is made in reliance on the accuracy of the information provided to EPA, and does not relieve PVG of the responsibility for complying fully with any and all applicable federal, state, and local laws, regulations, and permits.

Abstract for [M110013]

Q: The Western North Carolina Regional Air Quality Agency (WNC RAQA) seeks EPA clarification on whether the alternative monitoring approach used by an area source in its electrolytic process demonstrate continuous compliance as required by 40 CFR 63.11508(d)(6)of 40 CPR part 63, subpart WWWWWW, Area Source Standards for Platting and Polishing Operations?

A: EPA determines that the monitoring system is acceptable, assuming its operation is inspected and verified by NC RAQA, because the company uses a system that prevents plating from occurring when the tank covers are not in place. Specifically, the tank design and its interlock system ensure that the tank covers are in place at least 95 percent of the electrolytic process operating time.

Abstract for [M110014]

Q1: The West Tennessee Permit Program Division of Air Pollution Control Department of Environment and Conservation (APC DEC) seeks clarification from EPA on whether a facility engaged in open molding operations with mechanical resin and spray gel coat applications, demonstrating compliance under 40 CFR 63.5810(b) of subpart WWWW, NESHAP for Reinforced Plastics Composites Production, is required to demonstrate compliance at the end of a month in which no hazardous air pollutant (HAP) containing materials were applied since it was not operating due to lack of product orders?

A1: Yes. The facility is required to demonstrate compliance at the end of a month in which no HAP containing materials were applied, since the calculation must be '' . . . based on the amounts of each individual resin or gel coat used for the last 12 months.''

Q2: In the event that production does resume at the facility, will it be proper for the facility to include the months in which no HAP containing materials were applied as part of the 12-month period that ends in that month in which production has resumed, or should the facility use only the most recent 11 months in which HAP containing materials were applied plus the month in which production has resumed?

A2: The facility is required to perform the calculation based on the last 12 months, regardless of whether HAP containing materials were applied during those months, whether or not production resumes.

Abstract for [M110016]

Q: Are two electric boilers at the Elm River Lutheran Church in Galesburg, ND, which burn fuel oil as a backup fuel during power outages subject to 40 CFR part 63 subpart JJJJJJ?

A: No. The EPA believes that the intent of the rule is that electric boilers that only burn liquid fuel during a power outage would not be subject to the rule provided that the power outage is beyond the control of the boiler owner or operator.

Abstract for [M110017]

Q: Does EPA approve a revision of the June 2, 2008 Alternative Monitoring Request (AMR) to waive metal, ash, and chlorine feed rate operating parameter limits for the Tooele Chemical Agent Disposal Facility (TOCDF) to allow the processing of 155-mm Projectile bursters?

A: Yes. EPA approves revision of TOCDF's AMP request to process 155-mm Projectile bursters in the deactivation furnace system and to limit and monitor the Projectile feed rate rather than 12 HRA feed rate for mercury, ash, semi- and low-volatile metals, and chlorine required by 40 CFR 63.1209(l), (m), (n), and (o), respectively.

Abstract for [M110018]

Q1: Does EPA approve Huntsman demonstrating compliance with 40 CFR part 63 subpart VVVVVV's, NESHAP for Chemical Manufacturing Area Sources, management practices in 40 CFR 63.11495(a)(3) by inspecting the particulate matter (PM) collection system and baghouses in accordance with 40 CFR 63.11602(a)(2)(ii) of 40 CFR part 63 subpart CCCCCCC, NESHAP for Paints and Allied Products Manufacturing, at its Huntsman Advanced Materials facility in Los Angeles, California, which has several storage vessels subject to subpart VVVVVV and two storage vessels subject to subpart CCCCCCC?

A1: No. EPA determines that the proposal to inspect the PM collection system and baghouses in lieu of inspecting the actual process vessel, cover, and equipment is not acceptable since these are not-overlapping rule requirements along the air emissions path. EPA believes that leaks can occur anywhere along the air emissions path from the mixing vessels to the stack. Therefore, process vessels, covers, and equipment subject to subpart VVVVVV must be inspected according to 40 CFR 63.11495(a)(3).

Q2: Does EPA approve Huntsman's use of one of several proposed alternatives to comply with the ductwork inspection requirements at 40 CFR 63.11495(a)(3) of subpart VVVVVV and 40 CFR 63.11602(a)(2)(ii) of subpart CCCCCCC?

A2: Yes. EPA conditionally approves Huntsman use of Option 1(2) to meet the inspection requirements of the ductwork only, which state: ''inspect flexible and stationary ductwork, according to 40 CFR 63.11602(a)(2)(ii), as required, at the specified timeframes whether or not emissions are being actively controlled on every vessel that uses the common control device header.'' The condition for approval is that Huntsman must also record which process vessels were in operation during each inspection. Each mixing pot must be operational at least once a year during quarterly inspections and at least once a quarter during weekly inspections.

Q3: Is the rigid cartridge filter Huntsman uses in its baghouses to control PM emissions excluded from the annual inspection requirements of 40 CFR 63.11602(a)(2)(ii)(B) since it does not meet the definition of ''fabric filter'' in 40 CFR 63.11607, and therefore may be excluded from the annual inspection requirement 40 CFR 63.11602(a)(2)(ii)(B) of subpart CCCCCCC?

A3: Yes. EPA believes the rigid cartridge meets the definition of fabric filter in the rule. In addition, EPA believes that the Huntsman existing preventive maintenance program based on pressure differential established in Condition 5 of the South Coast Air Quality Management District ''Permit to Operate'' is an acceptable alternative to checking ''the condition of the fabric filter.'' Huntsman is still required to conduct inspection of the rigid, stationary ductwork for leaks, and of the interior of the dry particulate control unit for structural integrity, according to 40 CFR 63.11602(a)(2)(ii)(B).

Abstract for [M120009]

Q: Does EPA approve a change in test methods, from Method 5 to Methods 201 A and 202, for determining compliance with the particulate emissions standards in 40 CFR 63.1343(b)(1) of NESHAP Subpart LLL for Portland Cement Plants at the Cemex Construction Materials South (Cemex) Portland cement plant located in New Braunfels, Texas?

A: No. EPA does not approve the Cemex request for a change in test methods for determining compliance with the particulate emissions standards in 40 CFR part 63 subpart LLL. Cemex retroactively requested that EPA Region 6 approve a change in test methods, from Method 5 to Methods 201A and 202 after the tests were conducted in January 2011. The use of alternate test methods must be approved in writing in advance of testing. Additionally, EPA Headquarters Office of Air Quality Planning and Standards (OAQPS), who has the delegation to approve these types of changes in test methods, stated that it would not have approved this change in the test method because the alternate method was not acceptable for compliance demonstration under 40 CFR part 63 subpart LLL.

Abstract for [M120013]

Q: Does EPA approve a waiver to monitor only the liquid flow rate (and not pH) through five water absorbers used to control emissions from tank truck loading and storage tanks subject to 40 CFR part 63 subpart NNNNN, at the Dow Chemical Company's (Dow) production facility in Plaquemine, Louisiana?

A: No. EPA believes that more than one parameter should be monitored to provide a more complete determination of control performance. Monitoring liquid flow alone is insufficient to determine control effectiveness. Even in once-through absorbers, measurement of effluent pH ensures that the effluent has not reached the acid saturation concentration limit and is capable of absorbing additional acid vapor. Although 40 CFR part 63 subpart MMM allows either liquid flow rate or pressure drop to be chosen as monitored operating parameters, EPA stated in the response to comments for promulgation of 40 CFR part 63 subpart NNNNN in March 2006 that what applies in 40 CFR part 63 subpart MMM may not be appropriate for facilities subject to 40 CFR part 63 subpart NNNNN.

Abstract for [M120026]

Q: Does EPA approve of comparative temperature monitoring as a type of calibration verification that meets 40 CFR 63.3350(e)(9) of subpart JJJJ, Paper and Other Web Coating NESHAP, at the 3M's Medina, Ohio facility? If not, can this comparative monitoring technique be allowed as an alternative monitoring parameter to the calibration verification requirements?

A: No. EPA finds that that this comparative monitoring is not the same as a calibration verification as specified by 40 CFR part 63 subpart JJJJ. However, EPA can approve it as an alternative monitoring parameter to the calibration verification requirements in 40 CFR 63.3350(e)(9).

Abstract for [M120034]

Q. Will the overhaul of a 4400 horsepower Reciprocating Internal Combustion Engine (RICE) by Fairbanks Morse Engine (FME) facility in Beloit, Wisconsin, trigger reconstruction or modification under 40 CFR part 63, subpart IIII and JJJJ?

A. No. FME overhaul costs of the engine are less than 50 percent of the cost of a comparable new facility, and modification will not be triggered because emissions will not be increased. After the engine is overhauled, the engine might be subject to 40 CFR part 63, subpart ZZZZ depending on how much diesel fuel is used in a calendar year.

Abstract for [M120035]

Q: Is Vesatas' facility in Pueblo, CO subject to the NESHAP Area Source Standards for Nine Metal Fabrication and Finishing Source Categories, 40 CFR part 63 subpart XXXXXX, and is Vestas subject to the notification, recordkeeping, and reporting requirements of the regulation?

A. No. EPA finds that Vesatas' facility is not subject to 40 CFR part 63 subpart XXXXXX because it is not a major source of hazardous air pollutants (HAP), and the rule applies to area sources as specified at 40 CFR 63.11514. Because Vestas is not subject to 40 CFR part 63 subpart XXXXXX, Vestas would not be subject to the notification, recordkeeping, and reporting requirements of the regulation.

Abstract for [M130003]

Q. Does EPA approve the petition to waive the initial performance testing for four identical reciprocating internal combustion engines (RICE) at the Saint-Gobian Containers, Inc., Burlington, Wisconsin plant?

A: Yes. EPA approves the petition to waive the initial performance testing provided that the company can show the units are similar, burn the same fuel, and otherwise meet the criteria contained in EPA's stack testing guidance dated September 30, 2005.

Abstract for [M140001]

Q: Does EPA approve a request to establish a minimum combustion air pressure of 20 inches of water column on an instantaneous basis based upon operating experience as the liquid waste firing system (WFS) operating parameter limit (OPL) at the Lubrizol Corporation's Painesville facility in Ohio?

A: Yes. EPA approves Lubrizol's request to establish a minimum combustion air pressure of 20 inches of water on an instantaneous basis at all times while feeding liquid waste for its WFS OPL. EPA determined that the proposed waste firing system OPL ensures that the same or greater surface area of the waste is exposed to combustion conditions (e.g., temperature and oxygen) during normal operating conditions, as the incinerator demonstrated during the 2003 destruction and removal efficiency test.

Abstract for [M140002]

Q1. Is the MSW Power gasification unit located at the MSW Power Corporation's (MSW Power's) Green Energy Machine located at the Plymouth County Correctional Facility in Plymouth, Massachusetts subject to 40 part 60 subpart EEEE?

A1. No. EPA has determined that because of the energy recovery exemption in the definition of institutional waste, MSW Power gasification unit is not subject to 40 part 60 subpart EEEE while it is processing waste generated by the Plymouth County Correctional Facility and located on their grounds.

Q2. Is the MSW Power boiler which combusts only syngas generated by the gasifier subject to 40 part 63 subpart JJJJJJ?

A2. No. EPA has determined that because the MSW Power boiler burns only syngas, a gaseous fuel, the boiler is a gas-fired boiler as defined in the rule and therefore it is not subject to 40 part 63 subpart JJJJJJ.

Abstract for [M140003]

Q1. Is the Jacobs Vehicle Systems facility located in Bloomfield, Connecticut (Jacobs Vehicle), subject to 40 CFR part 63 subpart T if it does not use and it has no present intention of using any of the listed hazardous air pollutants (HAP) solvents in its degreaser in the future?

A1. No. EPA determines that because Jacobs Vehicle has certified that it no longer uses any of the listed HAP solvents due to switching degreasers and based on its commitment that it will continue in that mode for the foreseeable future, Jacobs Vehicle's degreasers and Jacobs Vehicle's facility are no longer subject to 40 CFR part 63 subpart T.

Q2. May Jacobs Vehicle take potential to emit restrictions to below major HAP source levels and no longer be subject to 40 CFR part 63 subpart PPPPP?

A2. Yes. EPA determines that Jacobs Vehicle may now limit its potential to emit to below major HAP source levels and no longer be subject to 40 CFR part 63 subpart PPPPP. Jacobs Vehicle test cells are an existing affected source subject to subpart PPPPP, because these were constructed before May 14, 2002, and not reconstructed after May 14, 2002, but do not have to meet an emission limitation or other substantive rule requirements. Since subpart PPPPP does not set a substantive compliance date for Jacobs Vehicle to comply with an emission limit or other substantive rule requirement for its Jacobs Vehicle test cells, the EPA's general policy referred to as ''once in, always in'' policy would not apply. EPA's ''once in, always in'' policy is that sources that are major on the first substantive compliance date of a NESHAP (and, therefore, subject to the requirements of the NESHAP that apply to major sources) remain major sources for purposes of that NESHAP from that point forward, regardless of the level of their potential HAP emissions after that date.

Q3. If Jacobs Vehicle takes facility wide potential to emit restrictions to below major HAP source levels, would its existing compression ignition engine become subject to the area source provisions of 40 CFR part 63 subpart ZZZZ?

A3. Yes. EPA's ''once in, always in'' policy would allow Jacobs Vehicle to take restrictions on its facility-wide potential to emit to below major HAP source levels and become an area source of HAP for purposes of 40 CFR part 63 subpart ZZZZ applicability before the first compliance date of May 3, 2013. If Jacobs Vehicle were to do so before May 3, 2013, its compression ignition engine would then be subject to the requirements for engines located at an area source of HAP.

Q4. If Jacobs Vehicle takes facility wide potential to emit restrictions to below major HAP source levels, would its existing boilers no longer be subject to 40 CFR part 63 subpart DDDDD? Would the existing boilers then become subject to the area source provisions of 40 CFR part 63 subpart JJJJJJ?

A4. Yes. EPA's ''once in, always in'' policy would allow Jacobs Vehicle to take restrictions on its facility-wide potential to emit to below major HAP source levels to become an area source of HAP and no longer be subject to 40 CFR part 63 subpart DDDDD before the first compliance date of 40 CFR part 63 subpart DDDDD. Because Jacobs Vehicle's boilers meet the definition of gas-fired boilers, provided they continue to do so, the boilers would not be subject to 40 CFR part 63 subpart JJJJJJ if Jacobs Vehicle became an area source of HAP.

Abstract for [M140004]

Q: Does EPA approve ExxonMobil's alternative monitoring plan (AMP) request for calculating the sulfur

dioxide emissions from two refinery Fluid Catalytic Cracking Units during Wet Gas Scrubber emission control device malfunctions or down time, in accordance with 40 CFR part 63 subpart UUU, at ExxonMobil's Baton Rouge, Louisiana refinery?

A: No. EPA does not approve ExxonMobil's AMP request. EPA determined that the request was not a rule-based proposal related to ExxonMobil's inability to meet existing 40 CFR part 63 subpart UUU provisions, but rather, a proposed alternative method to meet Consent Decree requirements that are separate from compliance with the rule.

Abstract for [M140005]

Q: Does EPA approve ExxonMobil's Alternative Monitoring Plan (AMP) for calculating the flue gas flow rate on two refinery Fluid Catalytic Cracking Units (FCCU), in lieu of direct measurement, to demonstrate initial and continuous compliance with the metal emission standard of 40 CFR 63.1564(a)(1)(iv), described as Option 4 in 40 CFR part 63 subpart UUU, and in accordance with Tables 1, 2, 6 and 7 of the final rule for Option 4, at ExxonMobil's Baton Rouge, Louisiana refinery?

A: Yes. EPA conditionally approves ExxonMobil's AMP request, as described in the EPA response letter. The maximum acceptable difference in stack-test measured and calculated total flue gas flow rate values shall be within ± 7.5 percent. Evaluation and adjustment of affected process monitors must be completed within three months of a stack testing event that resulted in a difference value greater than ± 7.5 percent. If any three consecutive stack testing events result in the need for corrective action adjustments, ExxonMobil must conduct a new stack test within ninety days of the third corrective action implementation in order to verify that the gas flow rate correlation and calculation method are still valid. ExxonMobil should ensure that this approval is referenced and attached to the facility's new source review and Title V permits for federal enforceability and is included in the refinery's Consent Decree.

Abstract for [Z120003]

Q: Are sour water streams managed upstream of a refinery sour water stripper at the Flint Hills Resources Corpus Christi East Refinery in Tulsa, Oklahoma subject to the Benzene Waste Operations 40 CFR part 61 subpart FF?

A: Yes. EPA has determined that the facility must comply with the requirements of 40 CFR part 61 subpart FF for sour water streams managed upstream of a sour water stripper based on the characteristics of the waste streams at the point that the waste water exits the sour water stripper. At facilities with total benzene equal to or greater than 10 megagram per year, all benzene-contaminated wastes are subject to the control requirements of 40 CFR part 61 subpart FF, not just the end waste streams counted toward the total annual benzene amount. EPA's response is based on the 1993 rule amendments which were issued after the March 21, 1991 letter from EPA to the American Petroleum Institute that Flint Hills' mentioned in the request.

Abstract for [Z130002]

Q1: Does the Area Source Boiler Rule, NESHAP subpart JJJJJJ exempt steam boilers that service mixed residential and commercial facilities from regulation?

A1: Yes. EPA clarifies to the National Oilheat Research Alliance that if a boiler meets the definition in 40 CFR 63.11237 of a residential boiler, it is not subject to the requirements of the Area Source Boiler Rule. In that definition, the boiler must be ''primarily used to provide heat and/or hot water for: (1) A dwelling containing four or fewer families, or (2) A single unit residence dwelling that has since been converted or subdivided into condominiums or apartments.'' EPA intends ''primarily'' to be interpreted as its common meaning. Therefore, a mixed-use facility must have a majority of the heat and/or hot water produced by the boiler allocated to the residential unit or units. One way a facility could demonstrate primary use is by showing that a majority of the facility's square footage is residential, but EPA recognizes that there may be other ways for a facility to demonstrate primary use.

Q2: Does the Area Source Boiler Rule define mixed residential and commercial buildings as strictly commercial or residential in use?

A2: No. EPA recognizes that some buildings may be used for a variety of uses. The nature of the building is only relevant in terms of determining whether a boiler is primarily used to service the commercial or residential facilities located within the building.

Abstract for [Z130003]

Q: Does EPA approve of the use of closed/covered chromium electroplating and anodizing tanks at the Southern Graphics Systems, Inc, Waukesha, Wisconsin facility in order to satisfy the requirement of a ''physical barrier'' per the ''housekeeping practice'' provisions in 40 CFR part 63 subpart N?

A: Yes. EPA conditionally approves the use of closed/covered chromium electroplating and anodizing tanks in order to satisfy the physical barrier requirement of 40 CFR part 63 subpart N. This approval is conditioned upon these tanks being closed/covered at all times buffing, grinding and polishing operations take place; and, the surface area of the tanks is a hundred percent covered, with no visible gaps on the top or side of the tank, except for ventilation inlets routed to a control device under negative pressure.

Abstract for [Z140001]

Q: Does EPA approve Colonial Pipeline Company's alternative monitoring request for use of top-side in-service inspections to meet the out-of-service inspection requirements for specific types of internal floating roof tanks with uniform and specific roof, deck, and seal configurations at several facilities, subject to several gasoline distribution (GD)-related regulations (40 CFR part 63, subpart R (GD MACT) and 40 CFR part 63, subpart BBBBBB (GD GACT) and/or 40 CFR part 60, subpart Kb, NSPS for Volatile Organic Liquid Storage Vessels)?

A: Yes. EPA approves Colonial's top-side in-service internal inspection methodology for the IFR tanks specified in the AMP request, which have uniform and specific roof, deck, and seal configurations, to meet the NSPS Kb internal out-of-service inspection required at intervals no greater than 10 years by the applicable regulations. EPA has determined that for the specified IFR storage tanks (tanks that are full contact, aluminum honeycomb panel constructed decks with mechanical shoe primary and secondary seals in tanks with geodesic dome roofs equipped with skylights), Colonial will be able to have visual access to all of the requisite components (i.e., the primary and secondary mechanical seals, gaskets, and slotted membranes) through the top side of the IFR storage tanks, as well as properly inspect and repair the requisite components while these tanks are still in service, consistent with the inspection and repair requirements established under NSPS Subpart Kb. In addition, Colonial's top-side in-service internal inspection methodology includes more stringent requirements than would otherwise be applicable to the IFR storage tanks specified in the AMP request. Colonial has agreed to (1) identifying and addressing any gaps of more than 1/8 inch between any deck fitting gasket, seal, or wiper and any surface that it is intended to seal; comply with the fitting and deck seal requirements and the repair time frame

requirement in NSPS Subpart Kb for all tanks, including GACT tanks; and implement a full top-side and bottom-side out-of-service inspection of the tank each time an IFR storage tank is emptied and degassed for any reason.

Abstract for [Z140002]

Q: Are solvent transfer racks and transport equipment, which are dedicated for the use of unloading hexane from transport vehicles to a vegetable oil production plant, located at the PICO Northstar Hallock facility (PICO Hallock) in Minnesota, subject to part 63, subpart GGGG, Solvent Extraction for Vegetable Oil Production NESHAP or to subpart EEEE, Organic Liquids Distribution (Non-Gasoline) National Emission Standards for Hazardous Air Pollutants?

A: EPA agrees that the PICO Hallock solvent transfer racks and equipment are subject to 40 CFR part 63 subpart GGGG and are not subject to 40 CFR part 63 subpart EEEE, because they would fall under the definition of ''Vegetable oil production process'' in the rule. Although solvent transfer racks and equipment which are dedicated for the use of unloading hexane from transport vehicles to a vegetable oil production facility are not explicitly mentioned in the definition of vegetable oil production process in 40 CFR part 63 subpart GGGG, they should be considered part of the ''equipment comprising a continuous process for producing crude vegetable oil and meal products'' when they are used solely to support the vegetable oil production process. EPA believes that the information provided by PICO Hallock confirms that the solvent transfer racks at the facility are exclusively used for this limited purpose.

Abstract for [Z140003]

Q: Does EPA approve United Services Automobile Association's (USAA) petition for additional testing hours under 40 CFR 60.4211(f), for additional maintenance checks and readiness testing hours of six emergency generator internal combustion engines at USAA's San Antonio, Texas headquarters facility?

A: Yes. EPA conditionally approves USAA's request. USAA demonstrated that extensive testing and maintenance of the emergency generators is required to ensure electrical continuity and reliability for maintaining critical operations in a continuous standby mode for immediate emergency use. EPA granted conditional approval of additional testing and maintenance hours on the six engines, provided that the facility maintains documentation to show that the additional hours are not used for meeting peak electrical demand.

Abstract for [XXXX]

Q: Does EPA approve an extension of the initial performance test deadline for a new biomass-fired cogeneration boiler (boiler) due to a force majeure event at the Nippon Paper Industries USA Corporation, Ltd. (NPIUSA) facility in Port Angeles, Washington?

A: Yes. EPA determines that a force majeure event, as defined in 40 CFR part 60, subpart A and 40 CFR part 63, subpart A, has occurred and that an extension of the performance test deadline under the applicable federal standards is appropriate. The inability to meet the performance test deadline was caused by circumstances beyond the control of NPIUSA, its contractors, or any entity controlled by NPIUSA and therefore constitutes a force majeure as defined in 40 CFR 60.2 and 63.2. The letters and supporting documentation submitted by NPIUSA provided timely notice, described the claimed force majeure event and why the event prevents NPIUSA from meeting the deadline for conducting the performance testing, what measures are being taken to minimize the delay, and NPIUSA's proposed date for conducting the testing. The EPA therefore believes it is appropriate to extend the performance test deadline.

Dated: August 22, 2014.

Lisa Lund,

Director, Office of Compliance.

[FR Doc. 2014–20895 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

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 November 3, 2014. 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 *CathyWilliams@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:* 3060–0761.

Title: Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05–231.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

Number of Respondents and Responses: 22,565 respondents; 1,149,437 responses.

Estimated Time per Response: 0.25 hours (15 minutes) to 120 hours.

Frequency of Response: Annual, one-time and on-occasion reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Total Annual Burden: 1,254,358 hours.

Total Annual Cost: $40,220,496.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Impact Assessment: Yes.

Needs and Uses: The Commission seeks to extend existing information collection requirements in its closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of ''pre-rule'' programming, be closed captioned. The existing collections include petitions by video programming providers, producers, and owners for exemptions from the closed captioning rules, responses by commenters, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors, and recordkeeping in support of complaint responses; and making video programming distributor contact information available to viewers in phone directories, on the Commission's Web site and the Web sites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them). In addition, the Commission seeks to extend proposed information collection requirements. Specifically, on February 20, 2014, the Commission adopted rules governing the quality of closed captioning on television. *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking,* CG Docket No. 05–231, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 2221 (2014), published at 79 FR 17911 (March 31, 2014). The Commission took the following actions, among others:

(a) Required video programming distributors to make best efforts to obtain certification from video programmers that their programming (i) complies with the captioning quality standards established in the Report and Order; (ii) adheres to the Best Practices for video programmers set out in the Report and Order; or (iii) is exempt from the closed captioning rules under one or more properly attained and specified exemptions.

(b) Adopted additional requirements and a ''compliance ladder'' for broadcasters that use electronic newsroom technique.

(c) Required video programming distributors to keep records of their activities related to the maintenance, monitoring, and technical checks of their captioning equipment.

(d) Required that petitions requesting an exemption based on the economically burdensome standard and all subsequent pleadings, as well as comments, oppositions, or replies to comments, be filed electronically in accordance with 47 CFR 0.401(a)(1)(iii) instead of as a paper filing. Comments, oppositions, or replies to comments must be served on the other party, by delivering or mailing a copy to the last known address in accordance with 47 CFR 1.47 or by sending a copy to the email address last provided by the party, its attorney, or other duly constituted agent, and must include a certification that the other party was served with a copy.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–20846 Filed 9–2–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10129, Flagship National Bank, Bradenton, FL

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Flagship National Bank, Bradenton, Florida (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Flagship National Bank on October 23, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 28, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–20879 Filed 9–2–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS14–08]

Appraisal Subcommittee Notice of Meeting

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square location: 1850 K Street NW., Washington, DC 20006.

Date: September 10, 2014.

Time: 10:30 a.m.

Status: Open.

Reports

Chairman
Executive Director
Delegated State Compliance Reviews
Financial Report
Appraisal Subcommittee Advisory Committee

Action Items

June 11, 2014 minutes—Open Session
FY15 Appraisal Foundation Grant Proposal
FY15 State Grant—Appraisal Foundation Education Proposal
Appraisal Foundation Supplemental Grant Request
ASC FY15 Budget Proposal

How to Attend and Observe an ASC meeting:

If you plan to attend the meeting in person, we ask that you notify the Federal Reserve Board via email at *appraisal-questions@frb.gov,* requesting

a return meeting registration email. The Federal Reserve Law Enforcement Unit will then send an email message with a Web link where you may provide your date of birth and social security number through their encrypted system. You may register until close of business September 5, 2014. You will also be asked to provide identifying information, including a valid government-issued photo ID, before being admitted to the meeting. Alternatively, you can contact Kevin Wilson at 202–452–2362 for other registration options. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: August 28, 2014.

James R. Park,

Executive Director.

[FR Doc. 2014–20936 Filed 9–2–14; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

August 27, 2014.

TIME AND DATE: 11:00 a.m., Thursday, September 11, 2014.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Signal Peak Energy LLC,* Docket No. WEST 2010–1130. (Issues include whether a particular accident was required to be immediately reported.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–20887 Filed 8–29–14; 11:15 am]

BILLING CODE P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

August 27, 2014.

TIME AND DATE: 10:00 a.m., Thursday, September 11, 2014.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Dawes Rigging & Crane Rental,* Docket No. LAKE 2011–206–M. (Issues include whether the Judge erred in concluding that the method of assembling a crane violated a mandatory standard.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2014–20886 Filed 8–29–14; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 17, 2014.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *George and Aileen McClintock Irrevocable Trust,* Sioux Falls, South Dakota, Jane M. Wyatt, Edina, Minnesota, and Anne D. McClintock, Medford, Massachusetts, both individually and as a trustees of George and Aileen McClintock Irrevocable Trust; to retain voting shares of Merchants Holding Company, Sioux Falls, South Dakota, and thereby indirectly retain voting shares of Merchants Bank, Rugby, North Dakota.

Board of Governors of the Federal Reserve System, August 28, 2014.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2014–20898 Filed 9–2–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–FAS–2014–01; Docket: 2014–0002; Sequence: 30]

Notice of Intent To Prepare a Supplemental Draft Environmental Impact Statement for the U.S. Department of State Foreign Affairs Security Training Center in Nottoway County, Virginia

AGENCY: U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), the GSA announces its intent to prepare a Supplement to the Draft Environmental Impact Statement (EIS), released October 26, 2012, analyzing the environmental impacts of site acquisition and development of the United States Department of State (DOS), Bureau of Diplomatic Security, Foreign Affairs Security Training Center (FASTC) at the Virginia Army National Guard Maneuver Training Center at Fort Pickett (Fort Pickett) and Nottoway County's Local Redevelopment Authority (LRA) area in Nottoway County, Virginia.

The Supplemental Draft EIS is being prepared to address substantial changes to the proposed action that are relevant to environmental concerns, as required under NEPA (40 CFR 1502.9), and will assess any new circumstances or information relevant to potential environmental impacts. The Supplemental Draft EIS will incorporate by reference and build upon the analyses presented in the 2012 Draft EIS, and will document the Section 106 process under the National Historic Preservation Act of 1966, as amended (36 CFR Part 800).

GSA will prepare the Supplemental Draft EIS in cooperation with DOS, United States Army Corps of Engineers, United States Environmental Protection Agency, and National Guard Bureau.

Dates and Addresses: A public scoping period and public scoping meeting for the proposed action were held in October 2011. However, the public may submit comments concerning the proposal for 30 days from the date of this notice. Written comments may be mailed to Abigail Low, GSA Project Manager 20 N 8th Street, Philadelphia, PA 19107, or may be sent via email to *FASTC.info@gsa.gov.* More information on the proposed FASTC program is available at *www.state.gov/recovery/fastc.*

Future notices will be published to announce the availability of the Supplemental Draft EIS and additional opportunities for public input.

FOR FURTHER INFORMATION CONTACT: Abigail Low, GSA Project Manager; 20 N 8th Street, Philadelphia, PA 19107 (215) 446–4815, *FASTC.info@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The purpose of the proposed FASTC at Fort Pickett is to consolidate existing dispersed hard-skills training functions into a single suitable location to improve training efficiency and enhance training operations. The proposed FASTC is needed to establish a facility from which DOS Bureau of Diplomatic Security may conduct a wide array of hard-skills security training to meet the increased demand for well trained personnel serving at embassies overseas and select foreign partners.

Fort Pickett and Nottoway County's LRA area in Nottoway County near Blackstone, Virginia was selected as a potential site in July 2011, and a Draft EIS was released in October 2012. In early 2013, the Administration indicated all efforts and work at the proposed site in Fort Pickett Army National Guard Maneuver Training Center and Nottoway County's LRA area should be put on hold pending additional due diligence and reviews at an existing training site in Georgia. As part of the due diligence effort requested by the Administration, DOS conducted site visits to the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. During this time period, DOS assessed the scope and size of the FASTC project and determined a smaller platform at Fort Pickett was more fiscally prudent.

In April 2014, the Administration re-affirmed the earlier DOS selection of the FASTC proposed sites in Fort Picket Army National Guard Maneuver Training Center and the Nottoway County LRA area at a reduced scope of requirements. The project will proceed as a hard-skills only facility.

Based on adjustments made to the proposed FASTC Program, DOS has undertaken the preparation of a Master Plan Update that modifies the previous alternatives evaluated in the 2012 Draft EIS. The Master Plan Update concept will be evaluated as Build Alternative 3 in the Supplemental Draft EIS. The alternatives to be fully evaluated in the Supplemental Draft EIS include the No Action Alternative and Build Alternative 3.

The proposed location of Build Alternative 3 includes three adjacent land parcels: Fort Pickett Parcels 21/20 and Grid Parcel, and Nottoway County LRA Parcel 9.

The Supplemental Draft EIS will assess potential impacts that may result from the modified alternative, including, air quality, noise, land use, socioeconomics, traffic, infrastructure and community services, natural resources, biological resources, cultural resources, and safety and environmental hazards. The analysis will evaluate direct, indirect, and cumulative impacts. Relevant and reasonable measures that could avoid or mitigate environmental effects will also be analyzed. Additionally, GSA will undertake any consultations required by applicable laws or regulations, including the National Historic Preservation Act.

No decision will be made to implement any alternative until the NEPA process is completed and a Record of Decision is signed.

Dated: August 19, 2014.

Myles Vaughan,

NEPA Program Manager, Facilities Management & Services Programs Division, U.S. GSA, Mid-Atlantic Region.

[FR Doc. 2014–20902 Filed 9–2–14; 8:45 am]

BILLING CODE 6820–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Diagnosis of Gout

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review of Diagnosis of Gout, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information will improve the quality of this review. AHRQ is conducting this systematic review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, and Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

DATES: Submission Deadline on or before October 3, 2014.

ADDRESSES: Online submissions: *http://effectiveheathcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/.* Please select the study for which you are submitting information from the list to upload your documents.

Email submissions: *SIPS@epc-src.org.*

Print submissions:

Mailing Address: Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, PO Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

FOR FURTHER INFORMATION CONTACT: Ryan McKenna,Telephone: 503–220–8262 ext. 58653 or Email: *SIPS@epc-src.org.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a review of the evidence for Diagnosis of Gout.

The EHC Program is dedicated to identifying as many studies as possible

that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on Diagnosis of Gout, including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.ahrq.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1937.*

This notice is to notify the public that the EHC Program would find the following information on Diagnosis of Gout helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.
- For completed studies that do not have results on ClinicalTrials.gov, please provide a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to followup/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- A list of ongoing studies that your organization has sponsored for this indication. In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution will be very beneficial to the EHC Program. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EHC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EHC Program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions. The entire research protocol is also available online at: *http://effectivehealthcare.ahrq.gov/search-for-guide-reviews-and-reports/?pageaction=displayproduct&productID=1937.*

Key Questions

Key Question 1

- What is the accuracy of clinical signs and symptoms and other diagnostic tests (such as serum uric acid, ultrasound, CT scan, DECT, and plain x-ray), alone or in combination, compared to synovial fluid analysis in the diagnosis of acute gouty arthritis, and how does the accuracy affect clinical decision making, clinical outcomes and complications, and patient centered outcomes?
- How does the diagnostic accuracy of clinical signs and symptoms and other tests vary by affected joint site and number of joints?
- Does the accuracy of diagnostic tests for gout vary by duration of symptoms (i.e., time from the beginning of a flare)
- Does the accuracy of synovial fluid aspiration and crystal analysis differ by i) the type of practitioner who is performing the aspiration and ii) the type of practitioner who is performing the crystal analysis?

Key Question 2

What are the adverse effects associated with each diagnostic test (including pain, infection at the aspiration site, radiation exposure) or harms (related to false positives, false negatives, indeterminate results) associated with tests used to diagnose gout?

PICOTS (Population, Intervention(s), Comparator, Outcome, Timing, Setting)

Population(s) (KQ1 and 2)

- Adults (18 years and over) presenting with symptoms (e.g., an acute episode of joint inflammation) suggestive of gout, including the following subgroups:
  - Male and female patients
  - Older (65 and over) and younger patients
  - Patients with comorbidities including hypertension, type 2 diabetes, kidney disease (renal insufficiency)
  - Patients with osteoarthritis, septic arthritis, or previous joint trauma
  - Individuals with a family history of gout

Interventions (KQ1, 2)

- Clinical history and physical exam
- Serum uric acid assessment
- US
- DECT
- Plain x-ray
- Joint aspiration by physicians and synovial fluid analysis using polarizing microscopy (by physicians or laboratory personnel)
- Combinations of these tests as identified in the literature

Comparators

- Joint synovial fluid aspiration and microscopic assessment for monosodium urate crystals (KQ1a–c, 2)
- Joint synovial fluid aspiration and microscopic assessment for monosodium urate crystals as performed by a practitioner with a different level of expertise or experience, e.g. rheumatologist, laboratory personnel (KQ1d)

Outcomes

- Diagnostic accuracy of clinical signs and symptoms, US, DECT, plain radiographs compared with joint aspiration and synovial fluid analysis (KQ1)
  - Sensitivity/specificity, true positives/true negatives, area under the curve
  - Positive, negative predictive value, positive/negative likelihood ratios (if prevalence known)
- Clinical decisionmaking
  - Additional testing
  - Pharmacologic/dietary management
- Intermediate outcomes
  - sUA
  - Synovial fluid crystals
  - Radiographic or US changes
- Clinical outcomes
  - Pain, joint swelling and tenderness
  - Patient global assessment, and activity limitations (KQ1,2)
- Adverse effects of the tests, including
  - Pain, infection, radiation exposure
  - Effects of false positive or false negative (KQ2)

Timing

- For clinical outcomes of symptom relief: 1–2 days minimum (KQ1)
- Early in a flare vs. later or post-flare (KQ1c)

- For adverse events: immediate

Settings

- Primary care (outpatient) or acute care setting, preferentially
- Outpatient rheumatology practices/ academic medical centers

Dated: August 26, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–20689 Filed 9–2–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Emerging Approaches To Diagnosis and Treatment of Non-Muscle-Invasive Bladder Cancer

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review of Emerging Approaches to Diagnosis and Treatment of Non-Muscle-Invasive Bladder Cancer, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information will improve the quality of this review. AHRQ is conducting this systematic review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, and Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

DATES: Submission Deadline on or before October 3, 2014.

ADDRESSES: Online submissions: *http://effectivehealthcare.AHRQ.gov/index.cfm/submitscientific-information-packets/.* Please select the study for which you are submitting information from the list to upload your documents.

Email submissions: *SIPS@epc-src.org.*

Print submissions:

Mailing Address: Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, PO Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, ATTN: Scientific Information Packet Coordinator, 3710 SW U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

FOR FURTHER INFORMATION CONTACT: Ryan McKenna, Telephone: 503–220–8262 ext. 58653 or Email: *SIPS@epc-src.org.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a review of the evidence for Emerging Approaches to Diagnosis and Treatment of Non-Muscle-Invasive Bladder Cancer.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (e.g., details of studies conducted). We are looking for studies that report on Emerging Approaches to Diagnosis and Treatment of Non-Muscle-Invasive Bladder Cancer, including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.AHRQ.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1941.*

This notice is to notify the public that the EHC Program would find the following information on Emerging Approaches to Diagnosis and Treatment of Non-Muscle-Invasive Bladder Cancer helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please indicate whether results are available on ClinicafTrials.gov along with the ClinicalTrials.gov trial number.
- For completed studies that do not have results on ClinicalTrials.gov, please provide a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- A list of ongoing studies that your organization has sponsored for this indication. In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute ALL Phase II and above clinical trials sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution will be very beneficial to the EHC Program. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EHC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EHC Program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRO.gov/index.cfm/join-the-email-list1/.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions. The entire research protocol, is also available online at: *http://effectivehealthcare.AHRO.gov/search-for-guides-reviews-and-reports/?pageaction=displayproduct&productID=1941.*

The Key Questions

Key Question 1

What is the diagnostic accuracy of various urinary biomarkers compared with other urinary biomarkers or standard diagnostic methods (cystoscopy, cytology, and imaging) in (1) persons with signs or symptoms warranting evaluation for possible bladder cancer or (2) persons undergoing surveillance for previously treated bladder cancer?

- Does the diagnostic accuracy differ according to patient characteristics (e.g., age, sex, ethnicity), or according to the nature of the presenting signs or symptoms?

Key Question 2

For patients with non-muscle-invasive bladder cancer, does the use of a formal risk-adapted assessment approach to treatment decisions (e.g.,

Guidelines of the European Association of Urology or based on urinary biomarker tests) decrease mortality or improve other outcomes (e.g., recurrence, progression, need for cystectomy, quality of life) compared with treatment not guided by an assessed risk-adapted approach?

Key Question 3

For patients with non-muscle-invasive bladder cancer treated with transurethral resection of bladder tumor (TURBT), what is the effectiveness of various intravesical chemotherapeutic or immunotherapeutic agents for decreasing mortality or improving other outcomes (e.g., recurrence, progression, need for cystectomy, quality of life) compared with other agents, TURBT alone, or cystectomy?

- What is the comparative effectiveness of various chemotherapeutic or imnnunotherapeutic agents, as monotherapy or in combination?
- Does the comparative effectiveness differ according to tumor characteristics, such as histology, stage, grade, size, or molecular/genetic markers?
- Does the comparative effectiveness of various chemotherapeutic or immunotherapeutic agents differ according to dosing frequency, duration of treatment, and/or the timing of administration relative to TURBT?
- Does the comparative effectiveness differ according to patient characteristics, such as age, sex, ethnicity, performance status, or medical comorbidities?

Key Question 4

For patients with high risk non-muscle-invasive bladder cancer treated with TURBT, what is the effectiveness of external beam radiation therapy (either alone or with systemic chernotherapy/immunotherapy) for decreasing mortality or improving other outcomes compared with intravesical chemotherapy/immunotherapy alone or cystectomy?

Key Question 5

In surveillance of patients treated for non-muscle-invasive bladder cancer, what is the effectiveness of various urinary biomarkers to decrease mortality or improve other outcomes compared with other urinary biomarkers or standard diagnostic methods (cystoscopy, cytology, and imaging)?

- Does the comparative effectiveness differ according to tumor characteristics, such as histology, stage, grade, size, or molecular/genetic markers?
- Does the comparative effectiveness differ according to the treatment used (i.e., specific chemotherapeutic or immunotherapeutic agents and/or TURBT)?
- Does the comparative effectiveness differ according to the length of surveillance intervals?
- Does the comparative effectiveness differ according to patient characteristics, such as age, sex, or ethnicity?

Key Question 6

For initial diagnosis or surveillance of patients treated for non-muscle-invasive bladder cancer, what is the effectiveness of blue light or other methods of augmented cystoscopy compared with standard cystoscopy for recurrence rates, progression of bladder cancer, mortality, or other clinical outcomes?

Key Question 7

What are the comparative adverse effects of various tests for diagnosis and post-treatment surveillance of bladder cancer, including urinary biomarkers, cytology, and cystoscopy?

Key Question 8

What are the comparative adverse effects of various treatments for non-muscle-invasive bladder cancer, including intravesical chemotherapeutic or immunotherapeutic agents and TURBT?

- How do adverse effects of treatment vary by patient characteristics, such as age, sex, ethnicity, performance status, or medical connorbidities such as chronic kidney disease?

PICOTS (Population, Intervention, Comparator, Outcome, Timing, Setting)

Population(s)

- For KQ 1, 6, and 7: Adults with signs or symptoms of possible bladder cancer (e.g., gross or microscopic hematurla, irritative voiding symptoms)
- For KQ 2: Adults with non-muscle-invasive bladder cancer (stages Ta, Tis, or Ti)
- For KQ 3 and 8: Adults with non-muscle invasive bladder cancer treated with TURBT
- For KQ 4 and 8: Adults with high-risk non-muscle invasive bladder cancer treated with TURBT
- For KQs 1 and 5 through 7: Adults undergoing surveillance following treatment for non-muscle invasive bladder cancer

Interventions

- For KQ 1, 5, and 7: Urinary biomarkers [a]
- For KQ 2: Risk-adapted treatment approaches
- For KQ 3a, 3b, 3c, 3d, and 8: Intravesical chemotherapeutic or immunotherapeutic agents [b]
- For KQ 4: External beam radiation therapy, with or without systemic chemotherapy or immunotherapy
- For KQ 6: Blue light or other methods of augmented cystoscopy

Comparators

- For KQ 1, 5, and 7: Other urinary biomarkers or standard diagnostic methods (cystoscopy, cytology, and imaging)
- For KQ 2: Treatment not guided by risk-adapted approach
- For KQ 3a, 3b, 3c, 3d, and 8: Other intravesical chemotherapeutic or innmunotherapeutic agent, different dose or duration of intravesical chemotherapy or immunotherapy, or transurethral resection of bladder tumor (TURBT) alone
- For KQ 4: Intravesical chemotherapeutic or immunotherapeutic agents or cystectomy

Outcomes

- For KQ 1 and 5: Diagnostic accuracy, using cystoscopy with biopsy as the reference standard
- For KQ 2, KQ 3, KQ 4, KQ 5: Mortality, disease-specific and all-cause
- For KQ 2, KQ 3, KQ 4, KQ 5: Need for cystectomy
- For KQ 2, KQ 3, KQ 4, KQ 5, KQ 6: Recurrence of cancer
- For KQ 2, KQ 3, KQ 4, KQ 5: Progression of cancer
- For KQ 2, KQ 3, KQ 4, KQ 5: Quality of life
- For KQ 7: Adverse effects of diagnostic testing (e.g., false-positives, labeling, anxiety, complications of cystoscopy)
- For KQ 8: Adverse effects of treatment (e.g., cystitis, urinary urgency, urinary frequency, incontinence, hematuria, pain, urosepsis, myelosuppression

Timing

Any duration of follow-up

Settings

- Inpatient settings
- Outpatient settings

[a] Restricted to tests that are approved for diagnosis of bladder cancer by the U.S. Food and Drug Administration (BTAstat® [BTA], Alere NMP228, BladderChek® [NMP22], UroVysion® [FISH] and ImmunoCytrm [immunocytology]) or available in the U.S. and classified as a Laboratory Developed Test by the FDA (CxBladderrm).

[b] Chemotherapeutic and immunotherapeutic agents of interest include: mitomycin; apaziquone; paclitaxel; gemcitabine; thiotepa; valrubicin; doxorubicin; bacillus Calnnette-Guerin (BCG); and interferon.

Dated: August 26, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–20690 Filed 9–2–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–14AAO]

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

Testing Act Early Messages and Materials for ''Learn the Signs. Act Early.''—Phase II,—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC initiated the ''Learn the Signs. Act Early.'' (LTSAE) campaign in 2004 in an effort to improve the likelihood that children with developmental disabilities are identified and connected with appropriate services at the earliest age possible. To this end, the campaign's overall goal has been to empower parents to ''Act Early'' if they have concerns about their child's development. Children from families insured by Medicaid and those from families with low incomes are at higher risk for developmental delays and disabilities, and thus are the target audience for the campaign.

The study described in this information collection request seeks to assess the impact of ''Act Early'' messages embedded within LTSAE campaign materials. To achieve this goal, we will work with our contractor, Westat, to test revised draft messages and materials with low-income parents through focus groups and intercept interviews administered via the web on a tablet device. Parents/guardians who are age 18–55 and who have children age 5 or younger will recruited from six primary care practices (3 in the Baltimore, Maryland metropolitan area and 3 in the Atlanta, Georgia metropolitan area) to participate in focus groups followed by an intercept interview.

Selected primary care practices will see children as part of their patient population and consist of a substantial number of low income families. Each of the six selected practices will receive study promotional materials, including a poster to hang in the office and waiting room as well as handouts to leave at the front desk. These materials will advertise the focus groups and outline eligibility criteria.

Parents interested in participating will be advised to call an 800 number to be screened and scheduled for a group discussion (if eligible). The 800 number will be staffed by the Westat study team who will be responsible for screening and scheduling. Representatives from each of the practices will be provided with brief ''talking points'' and study FAQs to refer to if interested parents have any basic questions about the study. It is estimated that 80 respondents will have to be screened in order to recruit 40 participants for the focus groups.

The focus groups will have 10 participants each. Four focus groups will be conducted in two locations (the metropolitan areas of Atlanta, Georgia and Baltimore, Maryland) with a total of 40 participants. Parents/guardians will be asked to complete an informed consent, which will take approximately 15 minutes to review and the focus group discussion using the moderator's guide will take 60 minutes to complete. Both of these focus group activities will have a total burden of 50 hours.

We plan to conduct a total of 40 intercept interviews. The intercept interviews will take place in the waiting rooms or right outside the waiting rooms. Parents will be recruited as they are waiting for their appointment. It is estimated that 80 respondents will have to be screened in order to recruit 40 participants. Twenty interviews will be conducted in each of two locations (Atlanta, Georgia and Baltimore, Maryland). The intercept interview will be conducted as a computer-assisted personal interviewing (CAPI) and will take each respondent approximately 15 minutes to complete, for an estimated total burden of 10 hours.

The total estimated burden for this data collection is 74 hours. There is no cost to respondents 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)
Parents/Guardians	Focus Group Screener	80	1	5/60
Parents/Guardians	Focus Group Informed Consent	40	1	15/60
Parents/Guardians	Focus Group Moderator's Guide	40	1	1
Parents/Guardians	Intercept Interview Screener	80	1	5/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response in hours)
Parents/Guardians	Intercept Interview	40	1	15/60

LeRoy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–20876 Filed 9–2–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0870]

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

Monitoring and Reporting System for Chronic Disease Prevention and Control Programs (OMB No. 0920–0870, exp. 11/30/2014)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use is the single most preventable cause of death and disease in the United States. Tobacco use causes heart disease and strokes, lung cancer and many other types of cancer, chronic obstructive pulmonary disease, lung disorders, pregnancy problems, sudden infant death syndrome, gum disease, and vision problems. Approximately 480,000 Americans die from tobacco-related illnesses annually, a higher number of deaths than the combined total deaths from HIV/AIDS, alcohol use, cocaine use, heroin use, homicides, suicides, motor vehicle crashes, and fires. For every person who dies from tobacco use, 20 more people suffer with at least one serious tobacco-related illness. There are also severe economic consequences of tobacco use as the U.S. spends approximately $280 billion annually in direct medical expenses and lost productivity attributable to the effects of tobacco use.

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) provides funding to health departments in States, territories, and the District of Columbia to implement and evaluate chronic disease prevention and control programs, including tobacco control programs. Currently, CDC has cooperative agreements to support tobacco control programs in all 50 states and the District of Columbia under FOA DP14–1415, an extension of FOA DP09–901. These cooperative agreements technically ended on March 28, 2014, however a one-year cost extension (DP14–1415) was granted. Due to the cost extension, final reports on awardee activities are due to CDC approximately 90 days after the end of the funding period (Summer 2015).

In order to maintain continuity in progress reporting through the end of the cost extension, CDC requests OMB approval to continue the collection of information from tobacco control program awardees for one year. Awardees will continue to submit progress reports through a Web-based management information system (MIS).

CDC will continue to collect information about each awardee's tobacco control objectives, planning, activities, resources, partnerships, strategies, and progress toward meeting objectives. Awardees will use the information reported through the electronic MIS to manage and coordinate their activities and to improve their efforts. CDC will use the information reported through the MIS to document and monitor each awardee's progress and to make adjustments, as needed, in the type and level of technical assistance provided to them. The information collection allows CDC to oversee the use of federal funds, and identify and disseminate information about successful tobacco control strategies implemented by awardees. CDC also uses the information to respond to Congressional and stakeholder inquiries about awardee activities, program implementation, and program impact.

Progress reporting through the MIS is required for CDC funded awardees. There are no costs to respondents other than their time. There are no changes to the content of the information collection or the estimated burden per response. The only changes are a decrease in the number of tobacco control program respondents from 53 to 51, and a change in reporting frequency from semi-annual to annual. As a result, there will be a net reduction of 330 annualized burden hours. For the one-year period of this Revision request, the total estimated annualized burden hours are 306.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response in hrs.)
State/District Department of Health, Tobacco Control Program.	Management Information System	51	1	6

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. 2014–20880 Filed 9–2–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–14–0214]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

National Health Interview Survey (NHIS) (OMB No. 0920–0214, expires 03/31/2016)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect data on the extent and nature of illness and disability of the population of the United States. The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2015, 2016, and 2017.

This voluntary and confidential household-based survey collects demographic and health-related information on a nationally representative sample of persons and households throughout the country. Personal identification information is requested from survey respondents to facilitate linkage of survey data with health-related administrative and other records.

Each year we collect information from approximately 55,000 households, which contain about 137,500 individuals.

Information is collected using computer assisted personal interviews (CAPI). A core set of data is collected each year that remains largely unchanged while sponsored supplements vary from year to year. The core set includes sociodemographic characteristics, health status, health care services, and health behaviors. For 2015, supplemental questions will be cycled in pertaining to cancer control, epilepsy, and inflammatory bowel disease and occupational health.

Supplemental topics that continue or are enhanced from 2014 will be related to food security, heart disease and stroke, children's mental health, disability and functioning, sexual orientation, smokeless tobacco and e-cigarettes, immunizations, and computer use. Questions on the Affordable Care Act from 2014 have been reduced in number in 2015. In addition, a follow-back survey will be conducted on previous NHIS respondents. The follow-back survey will focus on topics related to the Affordable Care Act including health care access and use, and health insurance coverage and will include multiple modes of contacting respondents.

To improve the analytic utility of NHIS data, minority populations are oversampled annually. In 2015, sample augmentation procedures used in previous years will continue to increase the number of African American, Hispanic, and Asian American persons.

In accordance with the 1995 initiative to increase the integration of surveys within the DHHS, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, academic, and private researchers to evaluate both general health and specific issues, such as cancer, diabetes, and access to health care. It is a leading source of data for the Congressionally mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health

Promotion and Disease Prevention Objectives, ''Healthy People 2020.''

There is no cost to the respondents 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)	Total burden hours
Adult Family Member	Screener Questionnaire	10,000	1	5/60	833
Adult Family Member	Family Core	45,000	1	23/60	17,250
Sample Adult	Adult Core	36,000	1	15/60	9,000
Adult Family Member	Child Core	14,000	1	10/60	2,333
Adult Family Member	Supplements	45,000	1	20/60	15,000
Adult Family Member	Followback	12,000	1	20/60	4,000
Adult Family Member	Reinterview Survey	5,000	1	5/60	417
Total					48,833

Leroy A. Richardson,

Chief, Information Collection Review, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–20918 Filed 9–2–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Delta States Rural Development Network Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Class Deviation from Competition Requirements for Delta States Rural Development Network Grant Program.

SUMMARY: The Office of Rural Health Policy (ORHP) is announcing supplemental awards to the current Delta States Rural Development Network Grant Program (Delta States) grantees. The supplemental funds will allow current Delta grantees to implement outreach and enrollment activities to the rural uninsured in the Mississippi Delta for the next Affordable Care Act's (ACA) Health Insurance Marketplace open enrollment period (November 15, 2014—February 15, 2015). In addition, it will help educate the newly insured about the insurance and benefits they can now access as a result of enrolling during the initial Health Insurance Marketplace open enrollment period. The overarching goals of this supplemental funding are to: (1) increase the number of uninsured educated about their coverage options, (2) increase the number of uninsured enrolled into the Health Insurance Marketplaces or other available sources of insurance, such as Medicaid and the Children's Health Insurance Program, and (3) increase the number of newly insured individuals educated about the benefits and primary care and preventative services to which they now have access.

SUPPLEMENTARY INFORMATION:

INTENDED RECIPIENT OF THE AWARD: CURRENT DELTA STATES GRANTEES

[Quantity: 12]

Grant No.	Grantee	City	State	Maximum funding
D60RH25764	Tombigbee Healthcare Authority	Demopolis	AL	$25,000
D60RH25754	Arcare	Augusta	AR	25,000
D60RH25757	Greater Delta Alliance for Health	Lake Village	AR	25,000
D60RH25763	Southern Illinois University	Carbondale	IL	25,000
D60RH25765	Baptist Health Madisonville, INC.,	Madisonville	KY	25,000
D60RH25758	The Health Enrichment Network	Oakdale	LA	25,000
D60RH25762	Parish of Richland	Delhi	LA	25,000
D60RH25758	Big Springs Medical Assoc	Ellington	MO	25,000
D60RH25760	County of Mississippi	Charleston	MO	25,000
D60RH25756	Delta State University	Cleveland	MS	25,000
D60RH25759	Jefferson Comprehensive Health Center	Fayette	MS	25,000
D60RH25761	Paris-Henry County Health Care Foundation	Paris	TN	25,000

Amount of Non-Competitive Awards: $25,000/award

Period of Supplemental Funding: September 15, 2014—July 31, 2015

CFDA Number: 93.912

Authority: Public Health Service Act, Section 330A (e) (42 U.S.C. 254(c)), as amended.

Justification: A greater proportion of rural residents lack health insurance in comparison to urban residents. With millions still uninsured, this supplemental funding will allow current Delta States grantees an opportunity to specifically employ and tailor ACA outreach and enrollment efforts to the uninsured population in rural Delta communities for the upcoming Health Insurance Marketplace open enrollment period (November 15, 2014—February 15, 2015). Additionally, Delta States grantees will be able help educate the newly insured rural Americans about the health insurance coverage and care to which they now have access.

FOR FURTHER INFORMATION CONTACT: CAPT Valerie A. Darden, MHS,

Community Based Division, Office of Rural Health Policy, Health Resources and Services Administration, 5600 Fishers Lane, Room 17W29C, Rockville, MD 20857, phone: (301) 443–0837, or email: *vdarden@hrsa.gov.*

Dated: August 25, 2014.

Mary K. Wakefield,

Administrator.

[FR Doc. 2014–20845 Filed 9–2–14; 8:45 am]

BILLING CODE 4165–15–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; NIAID Clinical Trial Implementation Cooperative Agreement (U01).

Date: September 24, 2014.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3123, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jay R. Radke, 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, 301–496–2550, *jay.radke@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''NIAID Investigator Initiated Program Project Applications (P01).''

Date: September 29, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3264, 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Andrea L. Wurster, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3259, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–761, 301–451–2660, *wurstera@mail.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: August 27, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–20855 Filed 9–2–14; 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 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 NIAID Investigator Initiated Program Project Applications (P01).

Date: September 30, 2014.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3257A, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda L. Fredericksen, Ph.D., Assistant Professor, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Dr. MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *brenda.fredericksen@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: August 27, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–20857 Filed 9–2–14; 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 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; NIAID Investigator Initiated Program Project Application (P01).

Date: September 22, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3132, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jay R. Radke, 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, 301–496–2550, *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: August 27, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–20856 Filed 9–2–14; 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 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 NIAID Clinical Trial Implementation Cooperative Agreement (U01).

Date: September 12, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3117, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, 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, 301–451–3679, *schleefrr@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.

(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: August 27, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–20858 Filed 9–2–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Subcommittee F—Institutional Training and Education.

Date: October 20–21, 2014.

Time: 7:30 p.m. to 3:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center 9751 Washingtonian Boulevard Gaithersburg, MD 20878.

Contact Person: Timothy C. Meeker, MD, Ph.D. Scientific Review Officer Resources and Training Review Branch Division of Extramural Activities National Cancer Institute 9609 Medical Center Drive, Room 7W624 Bethesda, MD 20892–9750 240–276–6464 *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Provocative Questions Group C.

Date: October 22–23, 2014.

Time: 5:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center 5701 Marinelli Road Bethesda, MD 20852.

Contact Person: Caron A Lyman, Ph.D. Chief, Scientific Review Officer Research Programs Review Branch Division Of Extramural Activities National Cancer Institute 9609 Medical Center Drive, Room 7W126 Bethesda, md 20892–9750 240–276–6348 *lymanc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants Program for Cancer Epidemiology (R03).

Date: October 30, 2014.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove 9609 Medical Center Drive, Room 7E030 Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Adriana Stoica, Ph.D. Scientific Review Officer Resources and Training Review Branch Division of Extramural Activities National Cancer Institute, NIH 9609 Medical Center Drive, 7W234 Rockville, MD 20850 240–276–6368 *stoicaa2@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: August 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–20853 Filed 9–2–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; MOST Study.

Date: October 9, 2014.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MPH, DRPH, National Institute On Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *MIKHAILI@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: August 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–20854 Filed 9–2–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Transfer of Ownership and Exclusive Use of 510(K) Number K113336 for the CDC DENV–1–4 Real-Time RT–PCR ASSAY

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice that the Centers for Disease Control and Prevention, Department of Health and Human Services, is contemplating the transfer of ownership and exclusive use of 510(k) Number K113336 to American Type Culture Collection (ATCC), a District of Columbia non-profit corporation. 510(k) Number K113336 allows marketing of the CDC DENV–1–4 Real-Time RT–PCR Assay, an *in vitro* molecular diagnostic test that consists of a panel of oligonucleotide primers and dual-labeled hydrolysis (TaqMan®) probes for the qualitative detection of dengue virus target sequences in serum and plasma using nucleic acid isolation, amplification, and detection on the ABI 7500 Fast Dx Real-Time PCR instrument. The contemplated transfer would occur in conjunction with the grant of a non-exclusive patent license to ATCC to practice the inventions embodied in patent applications under HHS Ref. No E–148–2013/0, including U.S. Provisional Patent Application No. 61/554,126, entitled ''Broad Detection of Dengue Virus Serotypes'', filed November 1, 2011.

DATES: Only written comments and/or applications for a license to practice the inventions embodied in HHS Ref. No E–148–2013/0 that include a request for the transfer of 510(k) Number K113336 that are received by the NIH Office of Technology Transfer on or before October 3, 2014 will be considered.

ADDRESSES: Any inquiries, comments, or other materials relating to the contemplated 510(k) transfer should be directed to: Tara L. Kirby, Ph.D., Unit Chief, CDC Unit, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4426; Facsimile: (301) 402–0220; Email: *tarak@mail.nih.gov.* Requests for copies of CDC's patent applications related to ''Broad Detection of Dengue Virus Serotypes'' (HHS Ref. No. E–148–2013/0), which are available for non-exclusive licensing, should also be directed as above.

SUPPLEMENTARY INFORMATION: Complete applications for a license to practice the inventions embodied in HHS Ref. No E–148–2013/0 that include a request for the transfer of 510(k) Number K113336 filed in response to this notice will be treated as objections to the grant of the contemplated transfer. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 28, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–20859 Filed 9–2–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0801]

Commercial Fishing Safety Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Commercial Fishing Safety Advisory Committee will meet in Providence, Rhode Island to discuss various issues relating to safety in the commercial fishing industry. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, September 23 and Wednesday, September 24, 2014, from 8 a.m. to 5:30 p.m. The meeting may close early if all business is finished. All submitted written materials, comments, and requests to make an oral presentation at the meeting should reach Jack Kemerer, Alternate Designated Federal Officer for the Commercial Fishing Safety Advisory Committee, no later than September 16, 2014. For contact information, please see the **FOR FURTHER INFORMATION CONTACT** section below. Any written material submitted by the public both before and after the meeting will be distributed to the Commercial Fishing Safety Advisory Committee and become part of the public record.

ADDRESSES: The Committee will meet at Rhode Island Department of Environmental Management Headquarters located at 235 Promenade Street, Providence, Rhode Island, Room 300.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the ''Agenda'' section below. Written comments must be submitted no later than September 16, 2014 if you want Committee members to be able to review it before the meeting, and must be identified by docket number USCG–2014–0801, and submitted by *one* of the following methods:

- *Federal Electronic Rulemaking Portal: http://www.regulations.gov* (preferred method to avoid delays in processing).
- *Mail:* Docket Management Facility (M–30), United States Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Facsimile:* (202) 493–2251.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329. Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316). Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* enter the docket number in the ''SEARCH'' box, press Enter and then click on the item you wish to view.

Public oral comment periods will be held during the meeting after each presentation and at the end of each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment periods may end before the prescribed ending time following the last call for comments. Contact Jack Kemerer as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Jack Kemerer, Alternate Designated Federal Officer of Commercial Fishing Safety Advisory Committee, Commandant (CG–CVC–3), United States Coast Guard Headquarters, 2703 Martin Luther King Junior Avenue SE., Mail Stop 7501, Washington, DC 20593–7501; telephone 202–372–1249, facsimile 202–372–8376, electronic mail: *jack.a.kemerer@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–493–0402 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Title 5 United States Code Appendix.

The Commercial Fishing Safety Advisory Committee is authorized by Title 46 United States Code Section 4508 and the Committee's purpose is to provide advice and recommendations to the United States Coast Guard and the Department of Homeland Security on matters relating to the safety of commercial fishing industry vessels.

A copy of all meeting documentation is available at *http://fishsafe.info/* Alternatively, you may contact Jack Kemerer as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Agenda

The Commercial Fishing Safety Advisory Committee will meet to review, discuss and formulate recommendations on topics contained in the agenda:

Day 1

The meeting will include administrative matters, reports, presentations, discussions, and Subcommittee sessions as follows:

(1) Swearing-in of new members, election of Chair and Vice-Chair, and completion of Department of Homeland Security Form 420 by Special Government Employee members.

(2) Status of Commercial Fishing Vessel Safety Rulemaking projects resulting from requirements set forth in the Coast Guard Authorization Act of 2010 and the Coast Guard and Maritime Transportation Act of 2012.

(3) Commercial Fishing Vessel Safety District Coordinators' reports on activities and initiatives.

(4) Industry Representatives' updates on safety and survival equipment, and classification of new fishing vessels.

(5) Presentation and discussion on fatality rates by regions and fisheries and update on safety and risk reduction related projects by the National Institute for Occupational Safety and Health.

(6) Presentation and discussion on safety standards by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

(7) Subcommittee/working group sessions on (a) standards for alternative safety compliance program(s) development, and (b) training program requirements for individuals in charge of a vessel and engineer officer qualifications.

(8) Public comment period.

(9) Adjournment of meeting.

There will be a comment period for Commercial Fishing Safety Advisory Committee members and a comment period for the public after each presentation and discussion. The Committee will review the information presented on any issues, deliberate on any recommendations presented in Subcommittee reports, and formulate recommendations for the Department's consideration.

Day 2

The meeting will primarily be dedicated to continuing Subcommittee/working group sessions on training requirements and alternative safety compliance programs, but will also include:

(1) Reports and recommendations from the Subcommittees to the full committee for consideration.

(2) Other safety recommendations and safety program strategies from the Committee.

(3) Public comment period

(4) Future plans and goals for the Committee.

(5) Adjournment of meeting.

Dated: August 28, 2014.

Jonathan C. Burton,

Captain, United States Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2014–20883 Filed 9–2–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The Board of Visitors for the National Fire Academy (Board) will meet on September 18–19, 2014. The meeting will be open to the public.

DATES: The meeting will take place on Thursday, September 18, 8:30 a.m. to 5:00 p.m. EDT and on Friday, September 19, 8:30 a.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the Board has completed its business.

ADDRESSES: The meeting will be held at the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Members of the public who wish to obtain details on how to gain access to the facility and directions may contact Cindy Wivell as listed in the **FOR FURTHER INFORMATION CONTACT** section by close of business September 12, 2014. Picture identification is needed for access. Members of the public may also participate by teleconference and may contact Cindy Wivell to obtain the call-in number and access code. For information on services for individuals with disabilities or to request special assistance, contact Cindy Wivell as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY INFORMATION** section. Comments must be submitted in writing no later than September 12, and must be identified by Docket ID FEMA–2008–0010 and may be submitted by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *FEMA–RULES@fema.dhs.gov.* Include the docket number in the subject line of the message.
- Mail/Hand Delivery: Cindy Wivell, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2008–0010'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.'' Prior to the meeting, and no later than September 10, handouts for the meeting will be posted at *http://www.usfa.fema.gov/nfa/about/bov.shtm.*

FOR FURTHER INFORMATION CONTACT:

Alternate Designated Federal Officer: Denis G. Onieal, telephone (301) 447–1117.

Logistical Information: Cindy Wivell, telephone (301) 447–1157, fax (301) 447–1834, and email *Cindy.Wivell@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Board of Visitors for the National Fire Academy (Board) will meet on Thursday, September 18, and Friday, September 19, 2014. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

Purpose of the Board

The purpose of the Board is to review annually the programs of the National Fire Academy (NFA) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, of the operation of the NFA and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines NFA programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the NFA to determine the adequacy of the NFA's facilities, and examines the funding levels for NFA programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the NFA.

Agenda

On the first day of the meeting, there will be 6 sessions, with deliberations and voting at the end of each session as necessary.

1. The Board will select a Chairperson and Vice Chairperson for Fiscal Year 2015, and the Chairperson will acknowledge the recognition given to the Board of Visitors for the National Fire Academy by the Department of Homeland Security's Committee Management Officer.

2. The Board will then review and give feedback on NFA program activities, including:

- The Managing Officer Program, a new multiyear curriculum that introduces emerging emergency services leaders to personal and professional skills in change management, risk reduction, and adaptive leadership;
- The Executive Fire Officer Program Symposium;
- Scheduling of back-to-back, 6-day classes/one stipend initiative;
- The curriculum development plan for Fiscal Year 2015;
- The curriculum Enterprise Shared Workspace, a database system developed to capture and track course development and revision activities;
- NFA Online, the NFA's web-based learning platform for distance learning courses;
- Mediated course deliveries, which provide NFA training through an instructor facilitated web-based learning environment;
- The Bring-Your-Own-Device program, which allows students to download the student manual to their own personal electronic devices and eliminates the use of paper-based student materials; and
- The Fire and Emergency Services Higher Education Recognition Program.

3. The Board will then receive updates on U.S. Fire Administration data, research, and response support initiatives.

4. The Board will then discuss the Professional Development Subcommittee activities, including the Professional Development Symposium, which brings national training and education audiences together for their annual conference and support initiatives, and the guidelines for work groups within the subcommittee.

5. The BOV will receive annual ethics training.

6. The BOV will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2015 Budget Request/Budget Planning, as well as tour the campus facility.

On the second day, the Board will conduct classroom visits and engage in an annual report writing session. Deliberations or voting may occur as needed during the report writing session.

There will be a 10-minute comment period after each agenda item; each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Cindy Wivell to register as a speaker.

Dated: August 27, 2014.

Denis G. Onieal,

Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2014–20979 Filed 9–2–14; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5757–N–01]

60-Day Notice of Proposed Information Collection: Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans

AGENCY: HUD Office of Lead Hazard Control and Healthy Homes, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: November 3, 2014.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans.

OMB Approval Number: 2539–0015.

Type of Request: Renewal with some changes due to program changes.

Description of the need for the information and proposed use:

Respondents: Cities, States and municipalities, universities, private companies.

Estimated Number of Respondents: 250.

Estimated Number of Responses: 250.

Frequency of Response: Annual.

Average Hours per Response: 80.

Total Estimated Burdens: 23,760 hours, $950,400.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	250	1 (annual)	1	80	23,760	$40.00	$950,400

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 27, 2014.

Michelle Miller,

Director, Programs Division for Office of Lead Hazard Control and Healthy Homes.

[FR Doc. 2014–20988 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–33]

60-Day Notice of Proposed Information Collection: Budget-Based Rent Increases

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Harry Messner at *harry.messner@hud.gov* or telephone 202–402–2626. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Budget Based Rent Increases.

OMB Approval Number: 2502–0324.

Type of Request: Extension.

Form Number: HUD–92457–a.

Description of the need for the information and proposed use: Budget Worksheet will be used by HUD Field staff, along with other information submitted by owners, as a tool for determining the reasonableness of rent increases. The purposes of the worksheet and the collection of budgetary information are to allow owners to plan for expected increases in expenditures.

Respondents: Owners and project managers of HUD subsidized properties.

Estimated Number of Respondents: 2,134.

Estimated Number of Responses: 2,134.

Frequency of Response: Annually.

Average Hours per Response: 5 hours 20 minutes.

Total Estimated Burdens: 11,374.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 27, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–20941 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–71]

30-Day Notice of Proposed Information Collection: Rent Reform Demonstration (Task Order 1)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with

the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 13, 2014.

A. Overview of Information Collection

Title of Information Collection: Rent Reform Demonstration (Task Order 1).

OMB Approval Number: 2528–New.

Type of Request: New collection.

Form Number: None.

Description of the need for the information and proposed use: The Department is conducting this study under contract with MDRC and its subcontractors (Branch Associates, The Bronner Group, Quadel Consulting Corporation, and the Urban Institute). The project is a random assignment trial of an alternative rent system. Families will be randomly assigned to either participate in the new/alternative rent system or to continue in the current system. For voucher holders, outcomes of the alternative system are hypothesized to be increases in earnings, employment and job retention, among others. Random assignment will limit the extent to which selection bias drives observed results. The demonstration will document the progress of a group of housing voucher holders, who will be drawn from current residents. The intent is to gain an understanding of the impact of the alternative rent system on the families as well as the administrative burden on Public Housing Agencies (PHAs). PHAs currently participating in the Moving to Work (MtW) Demonstration are being recruited to participate in the demonstration. Data collection will include the families that are part of the treatment and control groups, as well as PHA staff. Data for this evaluation will be gathered through a variety of methods including informational interviews, direct observation, surveys, and analysis of administrative records. The work covered under this information request is for the baseline survey. Work funded by subsequent task orders will be covered under a separate information collection request.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 27, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–20948 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–31]

60-Day Notice of Proposed Information Collection: Congregate Housing Services Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available information contact Carissa Janis, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410 by email *Carissa.l.janis@hud.gov*, telephone at 202–402–2487. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Congregate Housing Services Program.

OMB Approval Number: 2502–0485.

Type of Request: Extension of currently approved collection.

Form Number: HUD–90003, HUD–90006, HUD–90198, HUD–91180–A, SF–269, 91178–A.

Description of the need for the information and proposed use: Completion of the Annual Report by grantees provides HUD with essential

information about whom the grant is serving and what sort of services the beneficiaries receive using grant funds.

The Summary Budget and the Annual Program Budget make up the budget of the grantee's annual extension request. Together the forms provide itemized expenses for anticipated program costs and a matrix of budgeted yearly costs. The budget forms show the services funded through the grant and demonstrate how matching funds, participant fees, and grant funds will be used in tandem to operate the grant program. Field staff approve the annual budget and request annual extension funds according to the budget. Field staff can also determine if grantees are meeting statutory and regulatory requirements through the evaluation of this budget.

HUD will use the Payment Voucher to monitor use of grant funds for eligible activities over the term of the grant. The Grantee may similarly use the Payment Voucher to track and record their requests for payment reimbursement for grant-funded activities.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 55.

Estimated Number of Responses: 440.

Frequency of Response: Semi-annually to annually.

Average Hours per Response: 2.

Total Estimated Burdens: 687.5.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 26, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–20944 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–34]

60-Day Notice of Proposed Information Collection: Application for FHA Insured Mortgages

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Patricia McClung, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 204 402–4378. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Colette Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Emergency Homeownership Loan Program—Data Requirements.

OMB Approval Number: 2502–0597.

Type of Request: Extension.

Form Number: HUD–96020, HUD–96021a, HUD–96021b, HUD–96022, HUD–96023a, HUD–96023b, HUD–96024, HUD–96023, HUD–96025a, HUD–96025b, HUD–96026.

Description of the need for the information and proposed use: This information collection is necessary to determine applicant eligibility to receive mortgage relief assistance under the Emergency Homeowners' Loan Program. This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, an information collection package with respect to implementing the Emergency Homeowners' Loan Program targeted to borrowers facing foreclosure.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010 (Pub. L. 111–203, approved July 21, 2010, Sec 1496) appropriated $1billion to HUD to establish an Emergency Homeowner's Relief Fund, pursuant to section 107 of the Emergency Housing Act of 1975, that will provide emergency mortgage assistance to homeowners that are at risk of foreclosure due to involuntary unemployment or underemployment due to an adverse economic or medical condition. Accordingly, HUD is implementing the Emergency Homeowners Loan Program (EHLP) that is designed to offer a declining balance, deferred payment ''bridge loan'' (non-recourse, subordinate loan with zero interest) for up to $50,000 to assist eligible homeowners with payments of arrearages, including delinquent taxes and insurance. Additionally, EHLP may be used to assist eligible homeowners with up to 24 months of monthly payments on their mortgage principal, interest, mortgage insurance premiums, taxes, and hazard insurance. Assistance will not exceed $50,000 per eligible homeowner.

HUD will use two approaches to implement EHLP: (1) Provide allocations to States that currently have substantially similar programs to administer their mortgage relief funds directly; and (2) delegate key administrative functions to third party entities that will assist HUD with program implementation. The third party entities will be primarily

responsible for application intake, eligibility screening, funds control, payment distribution, and note processing.

Homeowners'(borrowers') participation in the program is voluntary. However, to help determine eligibility for assistance borrowers must submit the required application information and loan documentation to demonstrate that they meet program eligibility guidelines to receive mortgage relief assistance through EHLP.

Respondents : Application for benefits.

Estimated Number of Respondents: 36,264.

Estimated Number of Responses: 244,520.

Frequency of Response: Annually.

Average Hours per Response: 3.

Total Estimated Burdens: 229,304.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 26, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–20946 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–70]

30-Day Notice of Proposed Information Collection: Choice Neighborhoods Evaluation, Phase II

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 3, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 11, 2014 (79 FR 33590).

A. Overview of Information Collection

Title of Information Collection: Choice Neighborhoods Evaluation, Phase II.

OMB Approval Number: 2528–New.

Type of Request: New collection.

Form Number: None.

Description of the need for the information and proposed use: HUD is conducting an evaluation of the Choice Neighborhoods Initiative, focused on the initial round of grants funded in August 2011. This evaluation requires the collection of information from households living in the Choice Neighborhoods sites. Phase I, approved by the Office of Management and Budget under control number 2528–0286, involved a baseline survey of households (*http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201203-2528-001*).

Phase II, proposed here, involves tracking baseline survey respondents. The purpose of Phase II tracking is to maintain contact and location information for households that participated in the Choice Neighborhoods Demonstration Studies' Baseline Survey to analyze household mobility patterns and achieve a strong response rate on any follow up surveys that the U.S. Department of Housing and Urban Development (HUD) may conduct.

The tracking effort relies primarily on passive tracking strategies that use data obtained from HUD's PIC and TRACS systems, Choice Grantees, National Change of Address (NCOA) Database, and Accurint, to update the contact information for households. Active tracking strategies are used to complement passive strategies.

Respondents (i.e. affected public): This information collection will affect approximately 1,697 households that participated in the Choice Neighborhoods Demonstration Studies' Baseline Survey in 2013–14 in five cities—New Orleans, Chicago, Boston, Seattle, and San Francisco. Affected households include residents of HUD-assisted properties targeted by the Choice Neighborhoods Initiative as well as residents in the neighborhoods surrounding those properties. The respondents have all agreed to participate in the study.

There are five active tracking strategies that will directly affect Panel members:

1. Three quarters each year, panel members will receive a card/flyer with a toll-free number and Web site address set up for this study that will give respondents the opportunity to update their contact information online or by phone. We estimate that 25 percent of respondents (424) will respond to this flyer and it will take at most 5 minutes. This activity is estimated to result in 424 responses, 101.76 hours, and $1,387 of burden per year.

2. Once a year, the flyer/card will also contain a perforated mailer and a postage-paid business reply envelope, providing more opportunity for each panel member to update their contact information. We estimate that 90

percent of target development Panel members (675) and 50 percent of neighborhood Panel members (474) will respond to this flyer and it will take at most 5 minutes. This activity is estimated to result in 1,149 responses, 91.92 hours, and $1,253 of burden per year.

3. DIR will initiate follow-up phone calls to determine if the most current telephone number(s) in the contact database are correct. This action will only become necessary if there is no response to the annual mailers and there is no online update and the postcard/flyer is returned. DIR estimates that about half of the neighborhood sample (474) and 10 percent of the target development sample (74) will require a follow-up phone call. We estimate this call will take 5 minutes. We estimate that this activity will be successful for 50% of households (237 neighborhood and 37 target). This activity is estimated to result in 274 responses, 21.92 hours, and $299 of burden per year.

4. After a pre-determined number of unsuccessful telephone attempts (e.g., 3–5), a DIR field locator will visit the household to determine if the head of household still lives there. We estimate about 50 percent of the previous cases are expected to be resolved by telephone contact, with the remaining 50 percent (237 neighborhood and 37 target) being assigned to a field locator. We estimate this field location contact will take 5 minutes. This activity is estimated to result in 274 responses, 21.92 hours, and $299 of burden per year.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Postcard	424	Quarterly	3	0.08	101.76	$13.63	$1,387
Mailing with return envelope	1,149	Annual	1	0.08	91.92	13.63	1,253
Phone calls	274	Annual	1	0.08	21.92	13.63	299
In-person visit	274	Annual	1	0.08	21.92	13.63	299
Total	2,121				237.52		3,238

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 27, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–20959 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–69]

30-Day Notice of Proposed Information Collection: Public Housing Assessment System (PHAS) Appeals; PHAS Unaudited Financial Statement Submission Extensions; Assisted and Insured Housing Property Inspection Technical Reviews and Database Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: October 3, 2014.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 24, 2014 (79 FR 35767).

A. Overview of Information Collection

Title of Information Collection: Public Housing Assessment System (PHAS) Appeals; Public Housing and Multifamily Housing Technical Reviews and Database Adjustments; Assisted and Insured Housing property inspection Technical Reviews and Database Adjustments.

OMB Approval Number: 2577–0257.

Type of Request: Revision of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Pursuant to § 6(j)(2)(A)(iii) of the United States Housing Act of 1937, as amended, HUD established procedures in the Public Housing Assessment System (PHAS) rule for a public housing agencies (PHAs) to appeal a troubled assessment designation (§ 902.69). The PHAS rule in §§ 902.24 and 902.68 also provides

that under certain circumstances PHAs may submit a request for a database adjustment and technical review, respectively, of physical condition inspection results.

Pursuant to the Office of Housing Physical Condition of Multifamily Properties regulation at § 200.857(d) and (e), multifamily property owners also have the right, under certain circumstances, to submit a request for a database adjustment and technical review, respectively, of physical condition inspection results.

Appeals when granted change assessment scores and designations, and database adjustments and technical reviews when granted change property scores, all of which result is more accurate assessments.

Section 902.60 of the PHAS rule also provides that, in extenuating circumstances, PHAs may request an extension of time to submit required unaudited financial information. When granted, an extension of time postpones the imposition of sanctions for a late submission.

Respondents (i.e. affected public): Public Housing Agencies (PHAs) and Multifamily Housing property owners (MF POs).

Estimated Number of Respondents: 34,000.

Estimated Number of Responses: 1,430.

Frequency of Response: once for each PHA to submit a PHAS appeal; once for each PHA or MF PO to request a technical review or database adjustment; and once for each PHA to request an extension of time to submit unaudited financial information.

Average Hours per Response: average of five hours per PHAS appeal; average of eight hours for each request for a technical review or database adjustment; average of ten minutes for a request for an extension of time to submit unaudited financial information.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 27, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–20962 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5789–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2014

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2014, and ending on June 30, 2014.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2014.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2014 through June 30, 2014. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity,

the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2014) before the next report is published (the third quarter of calendar year 2014), HUD will include any additional waivers granted for the second quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: August 27, 2014.

Helen R. Kanovsky,

General Counsel.

APPENDIX

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2014 Through June 30, 2014

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 51.104(b)(2).

Project/Activity: The Director of the Boston Multifamily Hub requested a waiver of 24 CFR 51.104(b)(2) in order to facilitate the proposed infill development of Metro Village Apartments, a 150 unit facility adjacent to the Takoma Park Metro station using the HUD Section 221(d)(4) mortgage insurance program.

Nature of Requirement: HUD's regulation at 24 CFR 51.104(b)(2) requires an environmental impact statement for projects in unacceptable noise zones. The environmental impact statement may be waived in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made pursuant to the requirements of 24 CFR part 51.

Granted By: Mark Johnston, Deputy Assistant Secretary for Special Needs Programs.

Date Granted: April 17, 2014.

Reason Waived: It was determined that the project would further the HUD mission and advance HUD program goals to develop viable, sustainable communities and affordable housing. It was further determined that the construction of the units would adequately protect the interiors, and no outdoor, noise-sensitive uses will occur in the exposed space. Based on the environmental assessments, no adverse environmental impact will result from this development in an unacceptable noise zone.

Contact: James M. Potter, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7250, Washington, DC 20410, telephone (202) 402–4610.

• *Regulations:* 24 CFR 92.500(d)(1)(C).

Project/Activity: The City of Lorain, Ohio, requested a waiver of its June 30, 2014 deadline for the expenditure of HOME funds to enable it to meet an immediate need for housing rehabilitation, which would otherwise go unmet due to voluntary grant reductions taken in lieu of repayment to rectify past noncompliance.

Nature of Requirements: HUD's regulations at 24 CFR 92.500(d)(1)(C) requires that a participating jurisdiction expend its annual allocation of HOME funds within five years after HUD notifies a participating jurisdiction that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Granted By: Cliff Taffet, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 28, 2014.

Reasons Waived: The City administers an ongoing rehabilitation program for owner-occupants and has more than 40 applicants on a waiting list. In 2013, HUD approved the City's request to reduce its fiscal year 2013, 2014 and 2015 HOME grants by $709,518.49 in lieu of repayment for ineligible expenditures. These involuntary grant reductions have left the City without significant current and future grant funds to meet the immediate housing needs of the applicants on the waiting list. The waiver was granted because deobligation of an additional $365,100 of HOME funds would create an undue hardship for City residents currently on the waiting list for the City's HOME-funded rehabilitation program.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 570.489(a).

Project/Activity: The State of Georgia requested a waiver of 24 CFR 570.489(a) in order to allow it to use program income from prior years to increase the amount allowed for administrative costs under the State CDBG regulation's accounting method.

Nature of Requirement: HUD's regulation at 24 CFR 570.489(a) specifies the amount of CDBG funds that can be used to pay state administrative expenses and its approach for demonstrating compliance with the requirements. HUD's regulation at 24 CFR 570.489(a)(1)(v)(A) requires states to expend no more than the aggregate maximum allowable amount on administrative expenses (for each annual grant within the subject period) during its 3- to 5- year Consolidated Planning period.

Granted By: Clifford Taffet, Acting Assistant Secretary for Community Planning and Development.

Date Granted: May 21, 2014.

Reason Waived: HUD determined that adequate administrative funds are central to a State's capacity to administer the CDBG program. The State of Georgia was found to be in need of this one-time use of unused administrative funds from program income from its current year back to 1992 in order to adequately administer its CDBG program this program year.

Contact: James Höemann, Acting Deputy Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7184, Washington, DC 20410, telephone (202) 402–5716.

• *Regulation:* 24 CFR 574.330(a)(1).

Project/Activity: The City of Atlanta, GA requested a waiver of 24 CFR 574.330(a)(1) to allow a client to stay in an extended-stay motel beyond the 60-day time limit outlined in the regulations.

Nature of Requirement: The Housing Opportunities for Persons with AIDS (HOPWA) short-term supported housing regulation at 24 CFR 574.330(a)(1) provides that a short-term supported housing facility may not provide residence to any individual for more than 60 days during any six-month period.

Granted By: Clifford Taffet, Acting Assistant Secretary for Community Planning and Development.

Date Granted: June 30, 2014.

Reason Waived: According to the regulations, HUD may waive the 60-day time limit if a project sponsor has made good faith effort in finding permanent housing to its client within the 60-day time period. Good faith effort was found due to the project sponsor's extensive efforts in attempting to secure and locate permanent housing for the client.

Contact: William Rudy, Acting Director, Office of HIV/AIDS Housing, Office of

Community and Planning Development, Department of Housing and Development, 451 Seventh Street SW., Room 7212, Washington, DC 20410, telephone (202) 708–1934.

• *Regulation:* 24 CFR 576.403(c).

Project/Activity: The State of Iowa requested a waiver of 24 CFR 576.403(c) to allow its subrecipient, Iowa Legal Aid, to provide legal services to program participants without determining whether the program participants' housing meets the ESG habitability standards.

Nature of Requirement: HUD's regulation at 24 CFR 576.403(c) states that the recipient or subrecipient cannot use Emergency Solutions Grants (ESG) funds to help a program participant remain in or move into housing that does not meet the ESG minimum habitability standards for permanent housing.

Granted By: Mark Johnston, Deputy Assistant Secretary for Special Needs Programs.

Date Granted: May 1, 2014.

Reason Waived: HUD recognized that in certain instances, the best way to help program participants avoid homelessness is to keep them in their housing until better housing can be located, or their existing housing can be brought up to code. Legal services provide an important resource for persons who are at risk of homelessness, who need immediate assistance to help them avoid moving to the streets or emergency shelters. In some instances, it is not feasible to inspect a unit to ensure that it meets the habitability standards prior to the provision of the legal services assistance necessary to prevent homelessness for the individual or family. Also in some cases, the habitability requirement actually prohibits eligible program participants from receiving the legal services that could assist them to make the unit habitable and stabilize them in their housing.

Therefore, HUD granted a limited, conditional waiver to allow Iowa Legal Aid to provide legal services under the homelessness prevention component to program participants wishing to stay in their units, even if their units do not meet the habitability standards. The waiver also allows ESG funds to be used to provide the same program participants with the case management required by § 576.401(d) and (e), even if their units do not meet the habitability standards. The waiver is contingent upon the recipient's commitment to ensure that Iowa Legal Aid and the subrecipient(s) providing the required case management work with the property owners to bring the units into compliance with the habitability standards or assist the program participants to move if the units are unsafe.

Contact: Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410, telephone (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(c)(3), 202.5(g)(1), and 202.6(c)(2).

Project/Activity: FHA-approved Title I and Title II lenders and mortgagees with a fiscal year end of December 31, 2013, January 31, 2014, February 28, 2014, and March 31, 2014, required to submit financial information to HUD no later than 90 days after the end of the lender or mortgagee's fiscal year, as mandated by 24 CFR 5.801(c)(3) (in relevant part), 202.5(g)(1), and 202.6(c)(2).

Nature of Requirement: HUD's regulation at 24 CFR 5.801 (Uniform Financial Reporting Standards) provides that HUD-approved Title I and Title II supervised and nonsupervised lenders and mortgagees submit financial information to HUD on an annual basis in a form and substance prescribed by HUD. Lenders and mortgagees must submit the required financial information to HUD no later than 90 days after the end of the lender or mortgagee's fiscal year. The regulation provides that the time for filing may be extended at the sole discretion of HUD.

HUD's regulation at 24 CFR 202.5(g) (Approval of Lending Institutions and Mortgagees) provides for all FHA-approved lenders and mortgagees to furnish to HUD with a copy of their audited financial statements within 90 days of the lender or mortgagee's fiscal year end, except as provided in 24 CFR 202.6(c), to maintain FHA approval.

HUD's regulation at 24 CFR 202.6(c) delineates an exception from § 202.5(g)(1) for small supervised lenders and mortgagees, which are instead required to submit to HUD the unaudited financial reports required by their respective financial banking agency within 90 days of the small supervised lender or mortgagee's fiscal year end.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 26, 2014.

Reason Waived: As part of the FHA Transformation Initiative, FHA is implementing a counterparty risk framework that enables a better and timelier means of identifying, mitigating, and managing risk in the approval, recertification, monitoring, enforcement, and post-endorsement technical review processes. An integral part of the Initiative has been the development and deployment of the Lender Electronic Assessment Portal (LEAP), an online portal that houses data record collection and risk and fraud detection activities.

LEAP is being implemented in phases. FHA deployed the latest phase of LEAP, the automation of FHA's annual lender recertification process, on May 27, 2014. This phase, known as LEAP 3.0, includes enhanced financial reporting functionalities based on each lender's specific financial reporting structure, which improves lender usability, as well as FHA's ability to monitor lenders' performance. As of June 26, 2014, users were still having difficulty executing some functions in LEAP 3.0. Accordingly, lenders and mortgagees with a fiscal year end of December 31, 2013 would have had to submit the required reports on or before March 31, 2014.

Because LEAP 3.0 did not go live until after March 31, 2014, lenders and mortgagees who have a fiscal year end of December 31, 2013 were unable to access the new platform for submission. Mortgagees have 90 days after the end of their fiscal year to submit their annual financial reports within the designated timeframe for reporting. As a result, a temporary waiver of the subject regulations for FHA lenders and mortgagees with a fiscal year end of December 31, 2013, until 30 days after the deployment of LEAP 3.0, was granted in December 2013, in order to realign the required financial reporting timeframe with the launch of LEAP 3.0. Additional waivers were later granted for FHA lenders and mortgagees with a fiscal year end of January 31, 2014, and February 28, 2014, until 30 days after the deployment of LEAP 3.0.

Under the waivers, FHA lenders and mortgagees with a fiscal year end of December 31, 2013, January 31, 2014, or February 28, 2014, were required to submit the reports on or before June 30, 2014. Under the subject regulations, FHA lenders and mortgagees with a fiscal year end of March 31, 2014, were required to submit the reports on or before June 30, 2014.

Because technical system issues prevented some lenders from completing their annual recertification package in LEAP 3.0 on or before June 30, 2014, an extension of the temporary waiver of the regulations at 24 CFR 5.801(c)(3) (in relevant part), 202.5(g)(1) and 202.6(c)(2) for FHA lenders and mortgagees with a fiscal year end of December 31, 2013, January 31, 2014, February 28, 2014, and March 31, 2014, from June 30, 2014, until July 15, 2014, or until ten days after the Deputy Assistant Secretary for Single Family Housing has deemed the LEAP 3.0 system to be stable, was granted to allow these lenders and mortgagees the additional time necessary to fulfill their annual financial reporting and recertification requirements once LEAP 3.0 is operating at its full capacity.

Contact: Volky Garcia, Lender Approval and Recertification Division Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 490 L'Enfant Plaza East SW., Room P3214, Washington, DC 20024, telephone (202) 708–1515 (this is not a toll-free number).

• *Regulation:* 24 CFR 200.85(b).

Project/Activity: Santa Rita Village, Lompoc, Santa Barbara County, CA. Project Number: 122–11342.

Nature of Requirement: HUD's regulation at 24 CFR 200.85, which pertains to covenant against liens, states in paragraph (b) as follows: ''A covenant against repayment of a Commissioner approved inferior lien from mortgage proceeds other than surplus cash or residual receipts, except in the case of an inferior created pursuant to Section 223(d) of the Act, or a supplemental loan insured pursuant to Section 241 of the Act.''

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2014.

Reason Waived: The project consists of 36 affordable units in two three-story and four two-story apartment buildings. At the time of the waiver request, the project was 100 percent occupied and each unit had Section 8 project-based vouchers connected to it with the exception of one manager unit. The project would be the recipient of six committed public financing sources each with affordable housing restrictive convent agreements with nine percent LIHTCs allocations. The County's promissory note would be fully amortized in 25 years, earlier than the 35 year HUD insured Tax Credit Pilot loan, a risk HUD determined is acceptable given the mitigates. The borrower agreed to comply with the 15-year extension of the HAP contract requirements as part this transaction.

Contact: Theodore K. Toon, Director, Office of Multifamily Housing Development, HTD, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 200.926d(b)(4)(i).

Project/Activity: Whiting Avenue Estates, Stevens Point, Wisconsin Project Number: 075–11205.

Nature of Requirement: HUD's regulation at 24 CFR 200.926d(b)(4)(i) states in relevant part as follows: ''Each property shall be provided with vehicular or pedestrian access or private street. Private streets shall be protected by permanent easement.''

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2014.

Reason Waived: The project is an existing 80 unit apartment in Stevens Point, Wisconsin. Upon review of the closing package it was discovered that the primary access to the site crossed an abandoned railroad crossing for which there was a license agreement was not an easement. Access to the property is currently achieved through a license agreement between Wisconsin Central Limited Railroad Company & Nicolet Lumber Company, as assigned to the project owner/borrower, Stevens Point WA, LLC. The regulations was waived subject to the following conditions: The lender would certify at closing that the borrower has and would maintain sufficient insurance to enable the borrower to pay an indemnification required under paragraph 13 of the License Agreement out of insurance proceeds and the borrower has and would maintain insurance that meets the requirements of paragraph 14 of the License Agreement. Additionally, the title insurance company would provide the lender with an access endorsement insuring over the railroad's right to terminate the license.

Contact: Theodore K. Toon, Director, Office of Multifamily Housing Development, HTD, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 200.926d(f)(1)(i) and (f)(2)(i).

Project/Activity: Extension of previously granted waiver for the State of Alaska's boroughs of Anchorage, Fairbanks (North Star), Juneau, Kenai Peninsula, Mantanuska-Susitna, North Slope (Barrow), the Bethel Census Area, and the Fairbanks Southeast Census Area.

Nature of Requirement: HUD's Minimum Property Standards (MPS) that govern new construction for single-family dwellings provide that to be eligible for FHA insurance, each living unit within newly constructed single-family residential property should be capable of delivering a flow of 5 gallons per minute (gpm) over a 4 hour period in order to provide a continuing and sufficient supply of safe water under adequate pressure and appropriate quality for household use. Under these standards, water holding tanks, cisterns and similar alternative water supply systems are not considered as acceptable water supply systems under FHA requirements.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2014.

Reason Waived: Waiver of these standards was previously provided because in certain boroughs/census areas in the State of Alaska conventional water supply systems, such as those required under FHA's MPS, are not feasible due to the unique geographical characteristics of the area. State and local building codes in Alaska provide requirements for such alternative water supply systems that address health and safety concern, and FHA found these requirements to be adequate and not violate any statutory requirements.

It was determined that granting of the waiver is in the public's interest and consistent with HUD's objectives to expand the availability of FHA mortgage insurance, while providing appropriate safeguards under local and state codes to protect the health and safety of potential occupants. The waiver enables lenders to provide FHA financing to homebuyers for new construction single-family housing, in the designated boroughs, where it is not feasible to procure water from conventional water supply systems.

Contact: HUD Contact, Bill Schuler, Chief, Technical Branch 1, Santa Ana Homeownership Center, Department of Housing and Urban Development, 34 Civic Center Plaza, Santa Ana, CA. 92701, telephone number (714) 796–1200, extension 3449.

• *Regulation:* 24 CFR 200.926d(f)(1)(i) and 24 CFR 200.926d(f)(2)(i).

Project/Activity: Homebuyers of new construction single family homes located within Boroughs of Juneau, Mantanuska-Susitna, Anchorage, Bethel, North Slope (Barrow), Fairbanks (North Star and Southeast), and the Kenai Peninsula of the State of Alaska requested a waiver to allow Alternative Water Supply Systems due to geologic limitations on individual water wells.

Nature of Requirement: HUD's regulations at 24 CFR 200.926d(f)(1)(i) and (f)(2)(i) govern new construction of single-family dwellings and provide that to be eligible for FHA insurance, each living unit within newly constructed single-family residential property should be capable of delivering a flow of five gallons per minute over a four-hour period in order to provide a continuing and sufficient supply of safe water under adequate pressure and appropriate quality for household use.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2014.

Reason Waived: Conventional water supply systems, such as those required under FHA's Minimum Property Standards (MPS) are not feasible as water sources due to the unique geographical characteristics in those counties of Alaska. The waiver allows the properties to use hauled water, cisterns, and other alternative water supply systems in those areas where there is no acceptable permanent water supply available. Without the waiver of these MPS regulations, low- to moderate-income homebuyers in certain parts of the State of Alaska would be precluded from using FHA-insured financing.

Contact: Robert L. Frazier, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9274, Washington, DC 20410, telephone (202) 402–5752.

• *Regulation:* 24 CFR 203.43f(c)(i) and 24 CFR 203.43f(d)(ii).

Project/Activity: Manufactured homes with or without basements and located in Federal Emergency Management Agency (FEMA)-designated Special Flood Hazard Area (SFHA) in the State of Louisiana.

Nature of Requirement: HUD's regulations regarding Title II manufactured homes located in FEMA designated SHFAs found at 24 CFR 203.43f(c)(i) and 24 CFR 203f(d)(ii) require that ''The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation.'' However, this requirement at 24 CFR 203.43f differs from HUD's regulations governing minimum property standards for one- and two-family dwellings found at 24 CFR 200.926 and the requirements of the National Flood Insurance Program (NFIP) found at 44 CFR 60.3. The minimum property standard (MPS) at 24 CFR 200.926d(c)(4)(i) provides that the elevation of the lowest floor in residential structures with basements, located in FEMA-designated areas of special flood hazard, shall be at or above the base flood level (100 year flood level) required for new construction or substantial improvement of residential structures under regulations at 44 CFR 60.3 through 60.6. HUD's regulation at 24 CFR 200.926d(c)(4)(ii) states that the elevation of the lowest floor of residential structures with basements, located in a FEMA-designated area of special flood hazards, must be at or above the FEMA-designated base flood elevation (100 year flood level).

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 4, 2014.

Reason Waived: As a result of the conflict between 24 CFR 203.43f, which is based on flood elevation requirements measured from

the ''finished grade beneath the manufacture home'' and flood elevation requirements measured from the ''lowest floor'' of the manufactured home provided in 24 CFR 200.926d(c)(4)(i) and (ii), and 44 CFR 60.3(c)(6)(iv) and (c)(12), some lenders are refusing FHA-insured loans on manufactured homes that are being sited in flood zone areas on the grounds that FHA could deny insurance. Therefore, the regulations in the third sentence of 24 CFR 203.43f(c)(i) and the last sentence in 24 CFR 203.43f(d)(ii) were waived to permit the placement of FHA mortgage insurance on manufactured home, sited in the State of Louisiana, in flood designated areas, with the lowest floor at or above the 100 year return frequency, and otherwise conforming with HUD requirements for Title II, Section 203(b) insured financing of manufactured homes.

Contact: Robert L. Frazier, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9274, Washington, DC 20410, telephone (202) 402–5752.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Conchituate Homes Cooperative, FHA Project Number 023–44109, Framingham, Massachusetts. The owners have requested deferral of repayment of the Flexible Subsidy Operating Assistance Loan on this project due to their inability to repay the loan in full upon maturity. The owner's proposal includes funding improvements such as replacement of roofs, heating, hot water systems, repairing building exteriors, drives and walkways and provision of some handicapped accessible units.

Nature of Requirement: HUD's regulation at 24 CFR 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project . . .'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 10, 2014.

Reason Waived: Good cause was shown that it is in the public's best interest to grant this waiver. The requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan would allow this much needed housing to be substantially rehabilitated. The project would also be preserved as affordable housing for an additional 20 years.

Contact: Mark B. Van Kirk, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6160, Washington, DC 20410, telephone (202) 708–3730.

• *Regulation:* 24 CFR 232.7.

Project/Activity: Open Arms Retirement Center (Open Arms) is an 83-bed assisted living and dementia care facility. The facility is comprised of three wings. The facility does not meet the requirements of 24 CFR 232.7 ''Bathroom'' of FHA's regulations. The project is located in Raeford, NC.

Nature of Requirement: HUD's regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 11, 2014.

Reason Waived: The lender provided evidence that 94 percent of the residents of the facility require assistance and/or supervision with bathing.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.7.

Project/Activity: Open Arms Retirement Center (Open Arms) is an 83-bed assisted living and dementia care facility. The facility is comprised of three wings. The facility does not meet the requirements of 24 CFR § 232.7 ''Bathroom'' of FHA's regulations. The project is located in Raeford, NC.

Nature of Requirement: HUD's regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 11, 2014.

Reason Waived: The lender provided evidence that 94 percent of the residents of the facility require assistance and/or supervision with bathing.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.7.

Project/Activity: Presbyterian Home and Retirement Community (Presbyterian) is a Skilled Nursing Facility with 180 beds that has a wing with 16 assisted living residents. The assisted living wing does not meet the requirements of 24 CFR 232.7 ''Bathroom''.

Nature of Requirement: HUD's regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 2014.

Reason Waived: Most of the assisted living wing residents are high acuity and need assistance with bathing. Presbyterian concluded that this arrangement is safer for the residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.7.

Project/Activity: Presbyterian Home and Retirement Community (Presbyterian) is a Skilled Nursing Facility with 180 beds that has a wing with 16 assisted living residents. The assisted living wing does not meet the requirements of 24 CFR 232.7 ''Bathroom''.

Nature of Requirement: HUD's regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 2014.

Reason Waived: Most of the assisted living wing residents are high acuity and need assistance with bathing. Presbyterian concluded that this arrangement is safer for the residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 266.410(e).

Project/Activity: California Housing Finance Agency (CalHFA) Project Number: N/A.

Nature of Requirement: HUD's regulation at 24 CFR 266.410(e) requires that mortgages insured under the Section 542(c) Risk Sharing program be regularly amortizing over the term of the mortgage. CalHFA requested on a ''pilot'' basis, to finance 35 year mortgages with maturities between 17 to 25 years.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 27, 2014.

Reason Waived: HUD approved a similar, though much more limited, waiver for CalHFA in 2012, primarily to align the Risk Sharing program with the New Issue Bond Program. The waiver in 2014 was granted subject certain conditions which are: the waiver would be effective from July 1, 2014, and continuing until June 30, 2016, and would be limited to a total of 40 transactions; CalHFA must elect to take 50 percent or more of the risk of loss on all transactions, and loans made under the waiver may have amortization periods of up to 35 years, but terms as short as 17 years; projects must comply with Davis-Bacon labor standards in accordance with 24 CFR 266.225; and CalHFA must comply with regulations in 24 CFR 266.210 for insured advances or insurance upon completion transactions, and other conditions as stated in 2012 waiver.

Contact: Theodore K. Toon, Director, Office of Multifamily Housing Development, Office of Housing, Department of Housing

and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Breakthrough Phase III, Knoxville, TN, Project Number: 087–HD054/TN37–Q101–001.

Nature of Requirement: HUD's regulation at 24 CFR 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 29, 2014.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410, telephone number (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Nativity B.V.M. Place, Philadelphia, PA, Project Number: 034–EE167/PA26–S091–005.

Nature of Requirement: HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2014.

Reason Waived: Additional time was needed for the Sponsor/Owner to obtain a decision from the Pennsylvania Supreme Court involving a zoning appeal filed by a neighbor and for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 708–3000.

• *Notice of Funding Availability (NOFA):* Fiscal Year (FY) 2012 Section 811 Project Rental Assistance Demonstration Program (Docket No. FR–5600–N–28–A1).

Project/Activity: Amendment of the FY 2012 Section 811 Project Rental Assistance Demonstration Program NOFA dated May 15, 2012.

Nature of Requirement: The administrative costs provision in the FY 2012 NOFA (as corrected in a technical correction posted on July 2, 2012) allows a rate of no more than five (5) percent of the amount awarded based upon the range of tasks undertaken by the eligible applicant.

Granted By: Carol J. Galante, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 22, 2014.

Reason Waived: The amendment responds to significant concerns raised by the grantees regarding the scope of work required for them to administer this program and stated the amount of work necessary to implement the program exceeded the 5 percent included in the NOFA. They advised that they would need to use a significant amount of agency resources to set up and manage this new program due specifically to the coordination with their state Medicaid/Health and Human Services agencies, marketing the program to property owners, utilizing Tenant Rental Assistance Certification System (TRACS) and Enterprise Income Verification (EIV), and initial and ongoing monitoring and compliance. Given the extensive requirements of the program, HUD approved additional funding for administrative costs up to 8 percent of the amount awarded.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134, Washington, DC 20410, telephone (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Village of Hempstead Housing Authority (NY085) Hempstead, NY.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 17, 2014.

Reason Waived: The Housing Authority is requesting an extension of the due date because the Office of the Inspector General (OIG), while conducting a multiple year audit, maintained possession of the HA's records. The HA contends that the OIG has not returned any of the files to the HA and this prevented the contracted independent public auditor (IPA) from commencing his audit work in a timely manner.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Housing and Community Services Agency of Lane County (OR006), Eugene, OR.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 16, 2014.

Reason Waived: The HA is requesting a waiver of their FY 2013 audit submission deadline. The HA is requesting a two month extension from 6/30/2014 to 8/31/2014 so the IPA firm can complete State required courses. The HA originally retained an auditor for their FYE 9/30/2013 audit. However, the auditor withdrew from the audit engagement in November 2013 as a result of health issues. The termination of the audit engagement left the HA without an auditor for FY 2013.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: The City of Mesa Housing Authority (AZ005), Mesa, AZ.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 13, 2014.

Reason Waived: The Housing Authority (HA) contends that the City of Mesa's implementation of a new Emergency Repair Program (ERP) Integrated Information System during 2013 and a staff turnover caused a delay in the preparation of the 2013 Comprehensive Annual Financial Report (CAFR). As a result, the audit has been delayed.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 982.312(a).

Project/Activity: New York City Department of Housing Preservation and Development (NYCDHPD), New York City, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.312(a) provides that a family may not be absent from its unit for a period of more than 180 consecutive calendar days in any circumstance or for any reason.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2014.

Reason Waived: This regulation was waived since the affected individual was out of the unit due to a severe stroke.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.503(c)(3)(i).

Project/Activity: New York State Homes and Community Renewal (NYSHCR), Albany, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(c)(3)(i) provides that HUD Headquarters may approve exception payment standards above 120 percent of the fair market rent (FMR) under certain circumstances, including if such approval is necessary to prevent financial hardship for families, can be supported by statistically representative rental housing survey data and a program justification.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

Date Granted: June 16, 2014.

Reason Waived: This regulation was waived to establish exception payment standards that would expand housing opportunities for current and future voucher participants in Westchester County and to ensure that the gains and successes that have been accomplished under the Enhanced Section 8 Outreach Program are able to continue.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: State of Colorado Division of Housing (SCDH), Denver, CO.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 8, 2014.

Reason Waived: The disabled participant required an exception payment standard to remain in the same unit and afford her share of the rent. To provide this reasonable accommodation so the client could remain in her unit and pay no more than 40 percent of her adjusted income toward the family share, the SCDH was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: New York State Homes and Community Renewal (NYSHCR), New York City, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 9, 2014.

Reason Waived: The participant, who is disabled, required an exception payment standard to move to a new unit that met her health needs. To provide this reasonable accommodation so the client could be assisted in a new unit and pay no more than 40 percent of her adjusted income toward the family share, the NYSHCR was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Anaheim Housing Authority (AHA), Anaheim, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: April 25, 2014.

Reason Waived: The participant, who is disabled, required an exception payment standard to continue his pad rental for his manufactured home and afford his share of the rent. To provide this reasonable accommodation so the client could be assisted in his current unit and pay no more than 40 percent of his adjusted income toward the family share, the NOHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of DeKalb County (HADC), Decatur, GA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 5, 2014.

Reason Waived: The participant, with a 10-member family, was unable to locate housing pursuant to a Rental Assistance Demonstration (RAD) program conversion. In order to avoid displacement for this family, the family required an exception payment standard. To provide this accommodation to a non-disabled family displaced by a RAD conversion, the HACD was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Northwest Oregon Housing Authority (NOHA), Warrenton, OR.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 5, 2014.

Reason Waived: The participant, who is disabled, required an exception payment standard to continue to remain in her manufactured home and afford her share of the rent. To provide this reasonable accommodation so the client could be assisted in his current unit and pay no more than 40 percent of his adjusted income toward the family share, the AHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: New York State Homes and Community Renewal (NYSHCRA), New York City, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 8, 2014.

Reason Waived: Two participants, who are disabled, required an exception payment standard to continue to remain in their units and afford their share of the rent. To provide this reasonable accommodation so the clients could be assisted in their current units and pay no more than 40 percent of their adjusted income toward the family share, the NYSHCR was allowed to approve an exception payment standard for both

participants that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Revere Housing Authority (RHA), Revere, MA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 12, 2014.

Reason Waived: The participant, who is disabled, required an exception payment standard to continue to remain in her unit and afford her share of the rent. To provide this reasonable accommodation so the client could be assisted in her current unit and pay no more than 40 percent of her adjusted income toward the family share, the RHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Town of Eastchester (TE), Eastchester, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 18, 2014.

Reason Waived: This participant, who is disabled, required an exception payment standard to continue to remain in her unit and afford her share of the rent. To provide this reasonable accommodation so the client could be assisted in her current unit and pay no more than 40 percent of her adjusted income toward the family share, the TE was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: White Plains Housing Authority (WPHA), White Plains, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2014.

Reason Waived: Three participants, who are disabled, required exception payment standards to continue to remain in their units and afford their share of the rent. To provide this reasonable accommodation so that each client could be assisted in its current unit and pay no more than 40 percent of their adjusted income toward the family share, the WPHA was allowed to approve three exception payment standards that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.51(b)(2).

Project/Activity: Housing Authority of Maricopa County (HAMC), Peoria, AZ.

Nature of Requirement: HUD's regulation at 24 CFR 983.51(b)(2) states that the PHA may select proposals for housing assisted under a federal, state or local government housing assistance, community development, or supportive services program that requires competitive selection of proposals (e.g. HOME and units for which competitively awarded LIHTCs have been provided) where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 12, 2014.

Reason Waived: The waiver was granted so that HAMC could select a project that was competitively selected over three years ago to protect the HUD investment of federal tax dollars in a mixed finance project.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.59(b)(1).

Project/Activity: Housing Authority of the City of Loveland (HACL), Loveland, CO.

Nature of Requirement: HUD's regulation at 24 CFR 983.59(b)(1) states that the rent to owner for public housing agency (PHA) owned units is determined according to the same requirements as for other project-based voucher (PBV) units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 2014.

Reason Waived: The proposed rule *(The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs)* published in the **Federal Register** on May 15, 2012, proposed to eliminate the requirement for an appraisal by a licensed state-certified appraiser when establishing initial contract rents. This waiver was approved to provide partial relief from these requirements that the Department has proposed to eliminate.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 983.59(b)(1).

Project/Activity: Housing Authority of Snohomish County (HASC), Everett, WA.

Nature of Requirement: HUD's regulation at 24 CFR 983.59(b)(1) states that the rent to owner for public housing agency (PHA) owned units is determined according to the same requirements as for other project-based voucher (PBV) units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: March 18, 2014.

Reason Waived: The proposed rule *(The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs)* published in the **Federal Register** on May 15, 2012, proposed to eliminate the requirement for an appraisal by a licensed state-certified appraiser when establishing initial contract rents. This waiver was approved to provide partial relief from these requirements that the Department has proposed to eliminate.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2014–20964 Filed 9–2–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 14XL1109AF L10100000 PH0000 LXSIANMS0000 MO#4500069642]

Notice of Public Meeting; Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Western Montana Resource Advisory Council meeting will be held September 17, 2014 in Dillon, Montana. The meeting will begin at 9 a.m. with a 30-minute public comment period starting at 11:30 a.m. and will adjourn at 3 p.m.

ADDRESSES: BLM's Dillon Field Office, 1005 Selway Drive, Dillon, MT.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, MT 59701, 406–533–7617, *dabrams@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior through the BLM on a variety of management issues associated with public land management in Montana. During this meeting the council will discuss several topics, including the recent RAC Chair meeting in Billings, an update on the BLM's Greater Sage-Grouse Planning Strategy, and reports from the BLM's Butte, Missoula and Dillon field offices. All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Authority: 43 CFR 1784.4–2.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. 2014–20945 Filed 9–2–14; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liabilty Act (''Cercla'') and the Emergency Planning and Community Right-To-Know Act (''Epcra'')

On August 27, 2014, the Department of Justice lodged a proposed consent decree (''proposed Decree'') with the United States District Court for the Southern District of West Virginia in the lawsuit entitled *United States* v. *E.I. du Pont de Nemours and Company,* Civil Action No. 2:14–25143.

The United States filed this civil action for assessment of civil penalties and injunctive relief brought under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), Section 325 of EPCRA, 42 U.S.C. 11045; and Section 109(c) of CERCLA, 42 U.S.C. 9609(c) against E.I. du Pont de Nemours and Company (''Defendant'') in which the United States alleges violations of Sections 112(r)(1) and 112(r)(7) of the Clean Air Act, 42 U.S.C. 7412(r)(1) & (r)(7), violations of the emergency release notification requirements of Section 103 of CERCLA, 42 U.S.C. 9603, Section 304 of EPCRA, 42 U.S.C. 11004, and violations of the emergency planning and community right-to-know requirements of Section 312 of EPCRA, 42 U.S.C. 11022 at Defendant's chemical production facility in Belle, West Virginia. Under the proposed Decree, Defendant will pay a $1,275,000 civil penalty and will perform injunctive relief including enhanced training, formal reviews of its safety procedures, and annual reporting.

The publication of this notice opens a period for public comment on the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *E.I. du Pont de Nemours and Company,* D.J. Ref. No. 90–5–2–1–10707. 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.usdoj.gov/enrd/Consent_Decrees.html.* 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 $8.75 (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. 2014–20866 Filed 9–2–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members of SGIP 2.0, Inc.

Notice is hereby given that, on August 4, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Members of SGIP 2.0, Inc. (''MSGIP 2.0'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Businovation, LLC, Basking Ridge, NJ; Idaho National Laboratory, Idaho Falls, ID; Verday, LLC, St. Louis, MO; and Inmetro, Rio Comprido—Rio de Janeiro, Brazil, have been added as parties to this venture.

Also, Facilities Electrical Consulting Services, Easton, PA; Raytheon Trusted Computer Solutions, Herndon, VA; HD–PLC Alliance, Hakata-ku, Fukuoka, Japan; IE Technologies, Windsor, CO; Cox Software Architects LLC, Summit, NJ; SmartGrid Network, Chicago, IL; Tansy Energy Network, Scott Valley,

CA; TC9, Inc., Pittsboro, NC; Pentric, Inc., Sparks, NV; Air Conditioning, Heating & Refrigeration Institute, Arlington, VA; and Public Utility Commission of Texas, Austin, TX, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

The last notification was filed with the Department on May 23, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 19, 2014 (79 FR 35186).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–20896 Filed 9–2–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; SEMATECH, INC. D/B/A International SEMATECH

Notice is hereby given that, on August 1, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Inpria Corporation, Corvallis, OR; and Kurita Water Industries, Ltd., Tokyo, Japan, have been added as parties to this venture.

Also, Rohm and Haas Electronic Materials (Dow Chemical Subsidiary), Marlborough, MA; ACM, Freemont, CA; Adeka, Hackensack, NJ; Atotech, Rock Hill, SC; Qcept, Atlanta, GA; Lintec, Woburn, MA; Toray, New York, NY; and Kumho, Chugnam, Republic of Korea, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on April 21, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 16, 2014 (79 FR 28555).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–20897 Filed 9–2–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—U.S. Photovoltaic Manufacturing Consortium, Inc.

Notice is hereby given that, on August 1, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), U.S. Photovoltaic Manufacturing Consortium, Inc. (''USPVMC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Process Research Products, Trenton, NJ, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and USPVMC intends to file additional written notifications disclosing all changes in membership.

On November 14, 2011, USPVMC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2011 (76 FR 79218).

The last notification was filed with the Department on April 21, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 27, 2014 (79 FR 30165).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–20900 Filed 9–2–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

173rd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 173rd open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held as a teleconference on September 29, 2014.

The meeting will take place in C5320 room 6, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Public access is available only in this room (i.e. not by telephone). The meeting will run from 10:00 a.m. to approximately 5:00 p.m. The purpose of the open meeting is to discuss reports/recommendations for the Secretary of Labor on the issues of (1) PBM Compensation and Fee Disclosure, (2) Outsourcing Employee Benefit Plan Services, and (3) Issues and Considerations around Facilitating Lifetime Plan Participation. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before September 22, 2014 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments in rich text, Word, or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of an email. Statements deemed relevant by the Advisory Council and received on or before September 22 will be

included in the record of the meeting and will be available by contacting the EBSA Public Disclosure Room. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by September 22, 2014 at the address indicated.

Signed at Washington, DC, this 27th day of August 2014.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2014–20891 Filed 9–2–14; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11819]

Notice of Proposed Exemption involving Credit Suisse AG (hereinafter, either Credit Suisse AG or the Applicant) Located in Zurich, Switzerland

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of Proposed Exemption

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption, if granted, would affect the ability of certain entities with specified relationships to Credit Suisse AG to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84–14.

DATES: *Effective Date:* If granted, this proposed exemption will be effective as of the date a judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371 is entered in the District Court for the Eastern District of Virginia in Case Number 1:14–cr–188–RBS.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within 35 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210, Attention: Application No. D–11819. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210. Comments and hearing requests will also be available online at *www.regulations.gov* and *www.dol.gov/ebsa*, at no charge.

Warning: If you submit written comments or hearing requests, do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments and hearing requests may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Erin S. Hesse, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8546. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: If the proposed exemption in this document is granted, any entity with a specified relationship to Credit Suisse AG will not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption 84–14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), notwithstanding a judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, to be entered in the District Court for the Eastern District of Virginia in Case Number 1:14–cr–188–RBS. The proposed exemption has been requested by Credit Suisse AG pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, this notice of proposed exemption is being issued solely by the Department.

Summary of Facts and Representations [1]

Background

1. The Applicant represents that Credit Suisse Group AG (Credit Suisse Group) is a publicly-traded company organized in Switzerland and headquartered in Zurich. As of December 31, 2013, Credit Suisse Group had assets of approximately $980.1 billion, including approximately $47.3 billion in shareholders' equity. Credit Suisse Group owns a 100% interest in Credit Suisse AG (i.e., the Applicant), which operates as a bank, with all related banking, finance, consultancy, service, and trading activities in Switzerland and abroad.

2. The Applicant further represents that it has financial relationships with a wide range of entities that may act as ''qualified professional asset managers'' (QPAMs), in reliance on the exemptive relief provided in Prohibited

[1] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

Transaction Class Exemption (PTE) 84–14.[2]

PTE 84–14 provides a conditional exemption for certain transactions between a party in interest with respect to an employee benefit plan and an investment fund (as defined in Section VI(b) of PTE 84–14) in which the plan has an interest, where the investment fund is managed by a QPAM. One of the conditions for exemptive relief in PTE 84–14, Section I(g), precludes an entity that may otherwise meet the definition of a QPAM provided in Section VI(a) of PTE 84–14 from relying on the relief provided by the class exemption if that entity or an affiliate thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. This condition was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.[3]

3. The Applicant represents that it is an affiliate (as defined in Section VI(d) of PTE 84–14) of Credit Suisse Asset Management LLC, Credit Suisse Securities (USA) LLC, CSAM Limited, and a number of other entities that act as QPAMs and manage over $2 billion in assets (collectively, the Credit Suisse Affiliated QPAMs). The Applicant represents that it also owns a five percent or more interest in certain other entities (the Credit Suisse Related QPAMs) that may provide investment management services to plans in reliance on the exemptive relief provided in PTE 84–14, but are not affiliates (as defined in Section VI(d) of PTE 84–14) of Credit Suisse AG. As noted above in paragraph two, Section I(g) of PTE 84–14 would also preclude the Credit Suisse Related QPAMs from relying on the relief provided by PTE 84–14, notwithstanding the fact that they are not affiliated with Credit Suisse AG.

4. The Applicant notes that, on May 19, 2014, the Tax Division of the United States Department of Justice and the U.S. Attorney's Office for the Eastern District of Virginia filed a one-count criminal information (the Information) in the District Court for the Eastern District of Virginia (the District Court)[4] charging Credit Suisse AG with a conspiracy to violate section 7206(2) of the Code in violation of Title 18, United States Code, Section 371.[5] The Information identifies the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., of willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

5. According to the Statement of Facts filed in the criminal case (the Statement of Facts), for decades prior to and through approximately 2009, Credit Suisse AG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts[6] concealing their offshore assets and income from the IRS. Private bankers employed by Credit Suisse AG (referred to as Relationship Managers or RMs) served as the primary contact for U.S. clients with undeclared accounts at Credit Suisse AG. Credit Suisse AG used a variety of means to assist U.S. clients in concealing their undeclared accounts, including by: Assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; failing to maintain in the United States records related to the accounts; destroying account records sent to the United States for client review; using Credit Suisse managers and employees as unregistered investment advisors on undeclared accounts; facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; structuring transfers of funds to evade currency transaction reporting requirements; and providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

6. According to the Statement of Facts, Credit Suisse AG made a number of ineffectual attempts to consolidate these U.S. clients' accounts in Credit Suisse AG business entities that complied with U.S. law. For instance, starting in or about 2009, Credit Suisse AG engaged in a flawed process of verifying tax compliance of U.S. accounts in order to allow these accounts to remain at Credit Suisse AG. In December 2010, the Tax Division of the DOJ informed Credit Suisse AG that it had begun a criminal investigation of Credit Suisse AG that had uncovered evidence of tax law violations. Although Credit Suisse AG had either transferred or terminated the majority of its relationships with these U.S. clients by approximately 2010, Credit Suisse AG continued to identify U.S. customer accounts for closure until in or about 2013.

7. On May 19, 2014, pursuant to a plea agreement (the Plea Agreement), the Applicant entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The Applicant represents that it expects the District Court to enter a judgment of conviction (the Conviction) against Credit Suisse AG that will require remedies that are materially the same as set forth in the Plea Agreement. The Conviction is scheduled to be entered on or after November 1, 2014.

Failure To Comply With Section I(g) of PTE 84–14 and Proposed Relief

8. As noted above, Section I(g) of PTE 84–14 expressly identifies a criminal conviction of a QPAM, an affiliate thereof, or any owner, direct or indirect, of a 5 percent or more interest in a QPAM, for income tax evasion as precluding the QPAM from relying on the relief set forth in the class exemption. Pursuant to that section, once the Conviction is entered, the Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs will no longer be able to rely on PTE 84–14. The Applicant is seeking an individual exemption that would permit the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs to continue to rely on PTE 84–14, notwithstanding the Conviction, to the extent that such QPAMs meet certain additional conditions, as proposed herein.

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[3] See 47 FR 56945, 56947 (December 21, 1982).

[4] *United States of America* v. *Credit Suisse AG,* Case Number 1:14–cr–188–RBS.

[5] Section 7206(2) of the Code prohibits willfully aiding, assisting, procuring, counseling, or advising the preparation or presentation of false income tax returns. Section 371 of Title 18 of the United States Code generally prohibits two or more persons from conspiring either to commit any offense against the United States or to defraud the United States.

[6] An ''undeclared account'' is a financial account owned by an individual subject to U.S. tax and maintained in a foreign country that has not been reported by the individual account owner to the U.S. government on an income tax return and a Report of Foreign Bank and Financial Accounts (FBAR). U.S. citizens, resident aliens, and legal permanent residents have an obligation to report all income earned from foreign bank accounts on their tax returns and to pay the taxes due on that income.

Statutory Findings—In the Interest of Affected Plans and IRAs

9. The Applicant submits that the requested exemption would be in the interest of affected plans, those described in section 3(3) of ERISA (ERISA-covered plans) or section 4975(e)(1) of the Code (IRAs). In this regard, the Applicant states that the exemption would allow ERISA-covered plans and IRAs managed by the Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs to avoid the costs or losses that would arise if these QPAMs were suddenly unable to rely on the relief afforded by PTE 84–14 after the Conviction. The Applicant submits that if the Credit Suisse Affiliated QPAMs lose the relief in PTE 84–14, three main investment strategies used for ERISA-covered plans and IRAs would be impacted. The first strategy, Credit, seeks to invest in long-term fixed income opportunities by investing in syndicated bank loans, high yield bonds, and structured asset backed securities that trade over-the-counter in the primary and secondary markets. This strategy covers five ERISA-covered plans and pooled funds. About half of the strategy involves loans engaged in by Credit Suisse Affiliated QPAMs in reliance of the relief provided by PTE 84–14. The second strategy, Commodities, seeks to replicate the return of certain commodities indices by investing in futures, structured notes, total return swaps, and other derivatives. This strategy covers eight ERISA-covered plans and pooled funds. The third strategy, Liquid Alternative Beta (LAB), seeks to replicate the performance of hedge fund sectors such as long/short equity, event driven, and managed futures using liquid tradable instruments. The LAB strategy invests in ADRs, equity securities, ETFs, futures, forwards, and options. This strategy covers four ERISA-covered plans.

10. The Applicant represents that the cost of terminating an investment is generally the difference between the bid price and the ask price for any particular investment. Furthermore, some investments are more liquid than others (e.g., Treasury bonds are more liquid than foreign sovereign bonds and equities are more liquid than swaps). According to the Applicant, the strategies mentioned above (Credit, Commodities, and LAB) tend to be less liquid than certain other strategies and, thus, the cost of terminating an investment therein would be significantly higher than, for example, liquidating a large cap equity portfolio. The Applicant estimates that the cost to ERISA-covered plans and IRAs of transitioning from Credit Suisse Affiliated QPAMs to other unrelated managers in each of the three strategies is as follows: LAB—about eleven basis points; Credit—under two basis points to liquidate the assets but because of the bid/ask spread, as much as fifty basis points to reinvest the assets; and Commodities—three to five basis points. Based on the amount of assets in each strategy, the Applicant estimates that the total cost of liquidating would be about $450,000. However, the Applicant notes that the affected ERISA-covered plans and IRAs would need to reinvest in the market, so the real cost would potentially be much higher. The Applicant additionally represents that the Credit Suisse Affiliated QPAMs do not impose any charges or penalties on ERISA-covered plans or IRAs for terminating or withdrawing from any agreements for the provision of asset management or other services by the Credit Suisse Affiliated QPAMs.

11. The Applicant states further that the proposed exemption would enable ERISA-covered plans and IRAs managed by the Credit Suisse Affiliated QPAMs and Credit Suisse Related QPAMs to continue with the current investment strategies of their chosen QPAM. The Applicant suggests that any ERISA-covered plan or IRA that is forced to move to a new investment manager could incur transition costs, including costs associated with identifying an appropriate investment manager to act as a QPAM.

Statutory Findings—Protective of Affected Plans and IRAs

12. The Applicant submits that the proposed exemption, if granted, would be protective of affected ERISA-covered plans and IRAs. The Applicant represents that the criminal conduct of Credit Suisse AG that is the subject of the Conviction did not directly or indirectly involve the assets of any ERISA-covered plan or IRA. The Applicant also represents that neither the Credit Suisse Affiliated QPAMs nor the Credit Suisse Related QPAMs (including the officers, directors, employees, or agents of such QPAMs) participated in the criminal conduct that forms the basis for the Conviction. Additionally, the Applicant represents that neither the Credit Suisse Affiliated QPAMs nor the Credit Suisse Related QPAMs directly received any compensation in connection with such conduct. Finally, the Applicant states that Credit Suisse AG, the entity to be convicted, did not provide any fiduciary services to ERISA-covered plans or IRAs, except in connection with certain securities lending services of the New York Branch of Credit Suisse AG, or act as a QPAM for any ERISA-covered plan or IRA.

Credit Suisse Affiliated QPAMs. The Applicant explains that Credit Suisse Affiliated QPAMs are part of the Asset Management business in the U.S. and the U.K., whereas the Relationship Managers involved in the criminal conduct worked for Credit Suisse AG or other non-U.S. affiliates in Switzerland. Furthermore, the Applicant notes that Credit Suisse Affiliated QPAMs maintain separate registrations, books and records, and accounts from the Relationship Managers in Switzerland. Additionally, other than research and other publicly available information, which is provided to many investment managers, and which Credit Suisse Affiliated QPAMs receive from hundreds of analysts and investment banks, asset management decisions and asset management operations of Credit Suisse Affiliated QPAMs are independent of (i.e., not influenced by) Credit Suisse AG's management and business activities. The Applicant represents that the trading decisions and investment strategy of Credit Suisse Affiliated QPAMs for their clients is not shared with Credit Suisse AG employees outside of the asset management division, nor does the asset management division consult with other parts of the Credit Suisse AG organization prior to making investment decisions on behalf of its clients.

Credit Suisse Related QPAMs. The Applicant represents that Credit Suisse AG's relationships to many of the entities that may be considered Credit Suisse Related QPAMs is so minimal that Credit Suisse AG does not know if such entities are acting as QPAMs in reliance on the relief in PTE 84–14. Furthermore, the Applicant represents that any such Credit Suisse Related QPAMs maintain their own information and technology infrastructure and do not share office space or employees with Credit Suisse AG. According to the Applicant, such Credit Suisse Related QPAMs are entirely separate and distinct from Credit Suisse AG. Furthermore, the Applicant states that no employee of Credit Suisse AG sits on the board of directors of any Credit Suisse Related QPAM. The Applicant explains that Credit Suisse AG does not have the power to exercise a controlling influence over the management or policies of such QPAMs. Additionally, the Applicant's investments in such QPAMs are intended to be, and are, passive investments. The Applicant adds that Credit Suisse AG does not have the power to exercise a controlling

influence over the investment management decisions of these managers. Therefore, the Applicant maintains that Credit Suisse AG has no ''control'' over such Credit Suisse Related QPAMs as that term is defined in Section VI(e) of PTE 84–14.[7]

13. The Applicant represents that if this proposed exemption is granted, Credit Suisse Affiliated QPAMs will not use their authority or influence to direct an investment fund (as defined in Section VI(b) of PTE 84–14) managed by a Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services, for a fee, to the investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption. Additionally, the Applicant represents that any employee accused of engaging in the criminal conduct that underlies the Conviction will not transact business on behalf of any investment fund managed by the Credit Suisse Affiliated QPAMs.

14. The Department notes that the proposed exemption, if granted, provides additional protection to affected ERISA-covered plans and IRAs because it requires a prudently selected, independent auditor, who has appropriate technical training and proficiency with Title I of ERISA, to evaluate the adequacy of and compliance with the policy and training requirements described below. The first of the audits must be completed no later than twelve (12) months after a final exemption for the covered transactions is granted in the **Federal Register** and must cover the first six-month period that begins on the date a final exemption is granted in the **Federal Register**; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than 6 months after the period to which it applies. The auditor shall determine whether Credit Suisse AG and the Credit Suisse Affiliated QPAMs have developed, implemented, maintained, and followed written policies (the Policies) requiring and designed to ensure that: (i) The asset management decisions and asset management operations of the Credit Suisse Affiliated QPAMs are conducted independently of Credit Suisse AG's management and business activities; (ii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs fully comply with ERISA's fiduciary duties and prohibited transaction provisions, and do not knowingly participate in any violations of these duties and provisions; (iii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA, the Code, or other federal, state, or local law; (iv) any filings or statements made to federal, state, or local government are accurate and complete; (v) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with federal, state, or local government, or their ERISA-covered plan and IRA clients; (vi) Credit Suisse AG and the Credit Suisse Affiliated QPAMs comply with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are promptly reported in writing to appropriate corporate officers, the head of Credit Suisse U.S. Asset Management Compliance, the General Counsel for Credit Suisse Asset Management, the independent auditor responsible for reviewing compliance with the Policies, and a non-QPAM fiduciary of any affected ERISA-covered plan or IRA.

15. The independent auditor shall also determine whether Credit Suisse AG and the Credit Suisse Affiliated QPAMs have developed a training program (the Training) for Credit Suisse AG and Credit Suisse Affiliated QPAM personnel covering, at a minimum, the Policies, ERISA compliance, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), prompt reporting of wrongdoing, and ethical conduct. The auditor shall also determine whether Credit Suisse AG and the Credit Suisse Affiliated QPAMs are operationally compliant with the Policies and Training.

16. The auditor shall provide a written report (the Audit Report), upon completion of each audit that it conducts, to Credit Suisse AG and the Credit Suisse Affiliated QPAMs that describes the auditor's determinations as required under this proposed exemption, if granted, and the steps performed by the auditor during the course of the auditor's examinations. The Report will also include the auditor's determinations with regards to the adequacy of the Policies and the Training and any recommendations with respect to strengthening the Policies and Training, and any instances of Credit Suisse AG's or the Credit Suisse Affiliated QPAMs' noncompliance with the written Policies and Training described above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training shall be promptly addressed by Credit Suisse AG and the Credit Suisse Affiliated QPAMs, and any actions taken by Credit Suisse AG or the Credit Suisse Affiliated QPAMs to address such recommendations shall be included in an addendum to the Audit Report.

17. The auditor shall notify Credit Suisse AG and the Credit Suisse Affiliated QPAMs of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Credit Suisse AG or a Credit Suisse Affiliated QPAM shall provide written notice to the Department's Office of Exemption Determinations (OED) of any instances of noncompliance reviewed by the auditor within ten (10) business days after such notice is received from the auditor. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall identify whether and to what extent the assets of ERISA-covered plans or IRAs were involved in the instance(s) of noncompliance and an explanation of any corrective actions taken by Credit Suisse AG.

18. An executive officer of Credit Suisse AG will certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report and this exemption, addressed any inadequacies identified in the Audit Report, and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Similarly, an executive officer of each Credit Suisse Affiliated QPAM will certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report and this exemption, addressed any inadequacies identified in the Audit Report, and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Finally, the Applicant provides each certified Audit Report to OED no later than 30 days following its completion and Credit Suisse AG and the Credit Suisse Affiliated QPAMs make the Audit Report unconditionally

[7] Section VI(e) of PTE 84–14 defines the term ''control'' as the power to exercise a controlling influence over the management or policies of a person other than an individual.

available for examination by any duly authorized employee or representative of the Department, or other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by a Credit Suisse Affiliated QPAM.

19. The Department notes that the proposed exemption, if granted, will also be protective of plans and their participants and beneficiaries, because, in any agreements with ERISA-covered plans or IRAs for the provision of asset management or other services, Credit Suisse AG and the Credit Suisse Affiliated QPAMs will contain additional protective covenants described herein. In this regard, in such agreements, Credit Suisse AG or a Credit Suisse Affiliated QPAM, as applicable, must agree to comply with ERISA and to refrain from engaging in prohibited transactions; must not purport to waive, limit, or qualify the liability of Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; must not require the ERISA-covered plans or IRAs (or sponsors of such ERISA-covered plans or IRAs) to indemnify Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; must not restrict the ability of such ERISA-covered plans or IRAs to terminate or withdraw from their arrangements with Credit Suisse AG or the Credit Suisse Affiliated QPAMs; and must not impose any fees, penalties, or charges for such termination or withdrawal.

20. The Department also notes that a Credit Suisse Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption. Additionally, a Credit Suisse Related QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because Credit Suisse AG, a Credit Suisse Affiliated QPAM, or a different Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption.

21. The Applicant represents that if a final exemption is granted in the **Federal Register**, Credit Suisse AG and the Credit Suisse Affiliated QPAMs will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transactions for which Credit Suisse Affiliated QPAMs rely upon the relief in the exemption.

22. The Applicant represents further that, if this proposed exemption is granted, Credit Suisse AG will provide to (1) each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services, a notice of the proposed exemption, along with a separate summary of the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14.

23. Finally, the Applicant represents that the proposed exemption will protect the interests of affected ERISA-covered Plans and IRAs because it would allow the Credit Suisse Affiliated QPAMs to engage in transactions described in PTE 84–14 only to the extent that all of the longstanding conditions set forth in PTE 84–14 (except for Section I(g), as a result of the Conviction) are fully met.

Statutory Findings—Administratively Feasible

24. The Applicant represents that the requested exemption is administratively feasible because it does not require any monitoring by the Department but relies on an independent auditor to determine that Credit Suisse AG's and the Affiliated QPAMs' compliance policies, and the conditions for the exemption, are being followed. Furthermore, compliance with other sections of PTE 84–14 has been determined to be administratively feasible by the Department in many other similar cases.

Notice to Interested Persons

Notice of the proposed exemption (the Notice) will be provided to all interested persons within five (5) days of publication of the Notice in the **Federal Register**. The Notice will be provided to all interested persons in the manner agreed upon by the Applicant and the Department. Such notification will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required, pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform all interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within thirty-five (35) days of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

Based on the foregoing facts and representations submitted by the Applicant, the Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[8]

Section I: Covered Transactions

If the proposed exemption is granted, the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84–14 [9] notwithstanding the Conviction (as defined in Section II(c),[10] provided the following conditions are satisfied:

(a) Any failure of the Credit Suisse Affiliated QPAMs or the Credit Suisse Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(b) The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs (including officers, directors, employees, and agents of such QPAMs) did not participate in the criminal conduct of Credit Suisse AG that is the subject of the Conviction;

(c) The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs did not directly receive compensation in connection with the criminal conduct of Credit Suisse AG that is the subject of the Conviction;

(d) The criminal conduct of Credit Suisse AG that is the subject of the Conviction did not directly or indirectly involve the assets of any plan described in section 3(3) of ERISA (an ERISA-covered plan) or section 4975(e)(1) of the Code (an IRA);

(e) Credit Suisse AG did not provide any fiduciary services to ERISA-covered plans or IRAs, except in connection with securities lending services of the New York Branch of Credit Suisse AG, or act as a QPAM for ERISA-covered plans or IRAs;

(f) The Credit Suisse Affiliated QPAMs will not use their authority or influence to direct an investment fund (as defined in Section VI(b) of PTE 84–14) managed by a Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services, for a fee, to the investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(g) Credit Suisse AG and the Credit Suisse Affiliated QPAMs will ensure that no employee or agent involved in the criminal conduct that underlies the Conviction will engage in transactions on behalf of any investment fund (as defined in Section VI(b) of PTE 84–14) managed by the Credit Suisse Affiliated QPAMs;

(h)(1) Credit Suisse AG and the Credit Suisse Affiliated QPAMs immediately develop, implement, maintain, and follow written policies (the Policies) requiring and designed to ensure that: (i) The asset management decisions and asset management operations of the Credit Suisse Affiliated QPAMs are conducted independently of Credit Suisse AG's management and business activities; (ii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs fully comply with ERISA's fiduciary duties and prohibited transaction provisions, and do not knowingly participate in any violations of these duties and provisions; (iii) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA, the Code, or other federal, state, or local law; (iv) any filings or statements made to federal, state, or local government are accurate and complete; (v) Credit Suisse AG and the Credit Suisse Affiliated QPAMs do not make material misrepresentations or omit material information in their communications with federal, state, or local government, or their ERISA-covered plan and IRA clients; (vi) Credit Suisse AG and the Credit Suisse Affiliated QPAMs comply with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are promptly reported in writing to appropriate corporate officers, the head of U.S. Asset Management Compliance, the General Counsel for Asset Management, the independent auditor responsible for reviewing compliance with the Policies, and a non-QPAM fiduciary of any affected ERISA-covered plan or IRA;

(2) Credit Suisse AG and the Credit Suisse Affiliated QPAMs also immediately develop and implement a program of training (the Training), conducted at least annually for Credit Suisse AG and Credit Suisse Affiliated QPAM personnel; at a minimum, the training covers the Policies, ERISA compliance (including fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), prompt reporting of wrongdoing;

(i)(1) Credit Suisse AG and the Credit Suisse Affiliated QPAMs submit to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of the policies and training required in paragraph (h), as well as compliance with those requirements; the first of the audits must be completed no later than twelve (12) months after a final exemption for the covered transactions is granted in the **Federal Register**. The first audit must cover the first six-month period that begins on the date a final exemption is granted in the **Federal Register**; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than 6 months after the period to which the audit applies;

(2) The auditor's engagement shall specifically require the auditor to determine whether Credit Suisse AG and the Credit Suisse Affiliated QPAMs have developed, implemented, maintained, and followed Policies in accordance with the conditions of this proposed exemption and developed and implemented the Training, as required herein;

(3) The auditor shall test Credit Suisse AG's and each Credit Suisse Affiliated QPAM's operational compliance with the Policies and Training;

(4) For each audit, the auditor shall issue a written report (the Audit Report) to Credit Suisse AG and the Credit Suisse Affiliated QPAMs that describes the steps performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of Credit Suisse AG's or the Credit Suisse

[8] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[9] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[10] Section I(g) generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

Affiliated QPAMs' noncompliance with the written Policies and Training described in paragraph (h) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training shall be promptly addressed by Credit Suisse AG and the Credit Suisse Affiliated QPAMs, and any actions taken by Credit Suisse AG or the Credit Suisse Affiliated QPAMs to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that Credit Suisse AG and the Credit Suisse Affiliated QPAMs have implemented, maintained, and followed sufficient Policies and Training, shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) The auditor shall notify Credit Suisse AG and the Credit Suisse Affiliated QPAMs of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Credit Suisse AG or a Credit Suisse Affiliated QPAM shall provide written notice to the Department's Office of Exemption Determinations (OED), Room N–5700, 200 Constitution Avenue NW., Washington, DC 20210: Of any instances of noncompliance reviewed by the auditor within ten (10) business days after such notice is received from the auditor. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall identify whether and to what extent the assets of ERISA-covered plans or IRAs were involved in the instance(s) of noncompliance and an explanation of any corrective actions taken by Credit Suisse AG;

(6) With respect to each audit, an executive officer of Credit Suisse AG and an executive officer of each Credit Suisse Affiliated QPAM certifies in writing, under penalty of perjury, that the respective officer has reviewed the Audit Report and this exemption, addressed any inadequacies identified in the Audit Report, and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(7) Credit Suisse AG provides each certified Audit Report to OED no later than 30 days following its completion and Credit Suisse AG and the Credit Suisse Affiliated QPAMs make the Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, or other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by a Credit Suisse Affiliated QPAM;

(j) The Credit Suisse Affiliated QPAMs comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Conviction;

(k) In any agreements with ERISA-covered plans or IRAs for the provision of asset management or other services, Credit Suisse AG and the Credit Suisse Affiliated QPAMs agree to comply with ERISA and to refrain from engaging in prohibited transactions; the agreements do not purport to waive, limit, or qualify the liability of Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; the agreements do not require the ERISA-covered plans or IRAs (or sponsors of such ERISA-covered plans or IRAs) to indemnify Credit Suisse AG or the Credit Suisse Affiliated QPAMs for violating ERISA or engaging in prohibited transactions; the agreements do not restrict the ability of such ERISA-covered plans or IRAs to terminate or withdraw from their arrangements with Credit Suisse AG or the Credit Suisse Affiliated QPAMs; and the agreements do not impose any fees, penalties, or charges for such termination or withdrawal;

(l) After a final exemption is granted in the **Federal Register**, Credit Suisse AG and the Credit Suisse Affiliated QPAMs will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transactions for which Credit Suisse Affiliated QPAMs rely upon the relief in the exemption;

(m)(1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services, receives this notice of proposed exemption along with a separate summary describing the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14;

(n) A Credit Suisse Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption. A Credit Suisse Related QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because Credit Suisse AG, a Credit Suisse Affiliated QPAM, or a different Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption.

Section II: Definitions

(a) The term ''Credit Suisse Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a) [11] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Credit Suisse AG is a current or future ''affiliate'' (as defined in section VI(d) of PTE 84–14). The term ''Credit Suisse Affiliated QPAM'' excludes Credit Suisse AG.

(b) The term ''Credit Suisse Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which Credit Suisse AG owns a direct or indirect five percent or more interest, but with respect to which Credit Suisse AG is not an ''affiliate'' (as defined in section VI(d) of PTE 84–14).

(c) The term ''Conviction'' means the judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, which is scheduled to be entered in the District Court for the Eastern District of Virginia in Case Number 1:14–cr–188–RBS.

Signed at Washington, DC, this 28th day of August, 2014.

Lyssa Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2014–20884 Filed 9–2–14; 8:45 am]

BILLING CODE 4510–29–P

[11] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and such bank, savings and loan association, insurance company, or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–052]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of information collection extension request for research cards.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently-approved information collection used by individuals applying for a research card, which is needed to use original archival records in a National Archives and Records Administration facility. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before November 3, 2014 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (ISSD); Room 4400; National Archives and Records Administration; 8601 Adelphi Rd., College Park, MD 20740–6001; faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Please direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Researcher Application.

OMB number: 3095–0016.

Agency form number: NA Form 14003.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

Estimated number of respondents: 18,487.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,465 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.8. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility. NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

Dated: August 25, 2014.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2014–20820 Filed 9–2–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: September 2014

TIME AND DATES: All meetings are held at 2:00 p.m.

Tuesday, September 2;
Wednesday, September 3;
Thursday, September 4;
Tuesday, September 9;
Wednesday, September 10;
Thursday, September 11;
Tuesday, September 16;
Wednesday, September 17;
Thursday, September 18;
Tuesday, September 23;
Wednesday, September 24;
Thursday, September 25;
Tuesday, September 30.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition . . . of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Henry Breiteneicher, Associate Executive Secretary, (202) 273–2917

Dated: August 29, 2014.

William B. Cowen,

Solicitor.

[FR Doc. 2014–21108 Filed 8–29–14; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Accelerating the Big Data Innovation Ecosystem; Notice and Request for Comment

AGENCY: National Science Foundation.

ACTION: Notice and request for comments on accelerating the Big Data innovation ecosystem.

FOR FURTHER INFORMATION CONTACT: Fen Zhao at 703–292–7344 or *fzhao@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).

DATES: Please submit responses no later than November 1, 2014. Comments may be sent to *BIGDATA@nsf.gov,* following the guidance set below.

SUMMARY: NSF seeks input from stakeholders across academia, state and local government, industry, non-profits, and others across all parts of the Big Data innovation ecosystem on the formation of new Big Data Regional Innovation Hubs.

SUPPLEMENTARY INFORMATION:

Overview: The National Science Foundation is exploring the establishment of a national network of ''Big Data Regional Innovation Hubs.'' These Hubs will help to continue and scale up the kinds of activities and partnerships established by National Big Data R&D Initiative over the past 3 years as well as stimulate, track, and help sustain new regional and grassroots partnerships around Big Data. Potential roles for Hubs include, but are not limited to:

- Accelerate the ideation and development Big Data solutions to specific global and societal challenges

by convening stakeholders across sectors to partner in results-driven programs and projects.

• Act as a matchmaker between the various academic, industry, and community stakeholders to help drive successful pilot programs for emerging Big Data technology.

• Coordinate across multiple regions of the country, based on shared interests and industry sector engagement to enable dialogue and share best practices.

• Aim to increase the speed and volume of technology transfer between universities, public and private research centers and laboratories, large enterprises, and SMB's.

• Facilitate engagement with opinion and thought leaders on the societal impact of Big Data technologies as to maximize positive outcomes of adoption while reducing unwanted consequences.

• Support the education and training of the entire Big Data workforce, from data scientists to managers to data end-users.

NSF seeks input from stakeholders across academia, state and local government, industry, and non-profits across all parts of the Big Data innovation ecosystem on the formation of Big Data Regional Innovation Hubs. Please submit a response of no more than two-pages to *BIGDATA@nsf.gov* outlining:

1. The goals of interest for a Big Data Regional Hub, with metrics for evaluating the success or failure of the Hub to meet that goal;

2. The multiple stakeholders that would participate in the Hub and their respective roles and responsibilities;

3. Plans for initial and long-term financial and in-kind resources that the stakeholders would need to commit to this hub; and

4. A principal point of contact.

This announcement is posted solely for information and planning purposes; it does not constitute a formal solicitation for grants, contracts, or cooperative agreements.

Background: Aiming to make the most of the fast-growing volume of digital data, in March 2012, the Obama Administration announced the ''Big Data Research and Development Initiative.'' By improving our ability to extract knowledge and insights from large and complex collections of digital data, the initiative promises to help solve some the Nation's most pressing challenges. Beginning in the second year of the National Big Data Initiative, the Administration encouraged multiple stakeholders including federal agencies, private industry, academia, state and local government, non-profits, and foundations, to develop and participate in Big Data innovation projects across the country.

On November 12, 2013, dozens of public and private organizations met at a White House-sponsored ''Data to Knowledge to Action'' event to announce an inspiring array of Big Data related collaborations. These collaborations were the product and culmination of over a year of activities catalyzed by teams at OSTP, NITRD and Federal agencies to support the Big Data innovation ecosystem; such activities included workshops, one-on-one conversations with potential partners, Requests for Information, invited speaker lectures, and more. To sustain the forward momentum of the Data2Action event, The National Science Foundation is exploring the establishment of a national network of ''Big Data Regional Innovation Hubs.''

Submitted by the National Science Foundation August 27, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–20806 Filed 9–2–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0212]

Environmental Issues Associated With New Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S Nuclear Regulatory Commission (NRC) staff is issuing its final Interim Staff Guidance (ISG) Combined License and Early Site Permit (COL/ESP) No. 026 (COL/ESP–ISG–026), ''Environmental Issues Associated with New Reactors.'' The purpose of this ISG is to clarify the NRC guidance and application of NUREG–1555, ''Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Environmental Standard Review Plan,'' regarding the assessment of construction impacts, greenhouse gas and climate change, socioeconomics, environmental justice, need for power, alternatives, cumulative impacts, and cultural/historical resources as part of the preparation of environmental impact statements for early site permit (ESP) and combined license (COL) applications.

DATES: The effective date of this COL/ESP–ISG–026 is October 3, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0212 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–2013–0212. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3442; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg*).

FOR FURTHER INFORMATION CONTACT: Tanya Hood, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–1387 or email at *Tanya.Hood@nrc.gov.*

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 title	Proposed Revision ADAMS Accession No.	Redline ADAMS Accession No.
Interim Staff Guidance–026, Environmental Issues Associated with New Reactors	ML14092A402	ML13350A059.
Attachment 1—Staff Guidance for Greenhouse Gas and Climate Change Impacts	ML14100A157	ML13350A134.
Attachment 2—Staff Guidance for Socioeconomics and Environmental Justice	ML14100A535	ML13350A399.
Attachment 3—Staff Guidance for Cultural and Historical Resources	ML14100A025	ML13347B223.
Attachment 4—Staff Guidance for Cumulative Impacts	ML14100A454	ML13347B214.
Attachment 5—Staff Guidance for Need for Power	ML14100A461	ML13350A444.
Attachment 6—Staff Guidance for Alternatives	ML14100A471	ML13347B173.

ADAMS Accession No.	Document title
ML14049A011	Interim Staff Guidance 26–27 Comment Resolution Summary Table.
ML13347B127	Interim Staff Guidance 26–27 Comment Resolution Detailed Table.

The NRC staff issues COL/ESP–ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for ESPs, design certifications, and COLs by the Office of New Reactors. The NRC staff intends to incorporate the final approved COL/ESP–ISG–026 into the next revision of the Environmental Standard Review Plan and related guidance documents.

The NRC posts all final ISGs on the NRC's public Web page at *http://www.nrc.gov/reading-rm/doc-collections/isg/,* which is where the public may easily obtain access to COL/ESP–ISG–026.

Backfitting and Issue Finality

Issuance of this ISG does not constitute backfitting as defined in § 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule), or be regarded as backfitting under Commission and Executive Director for Operations guidance, and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The NRC staff's position is based upon the following considerations.

1. *The ISG positions do not constitute backfitting, inasmuch as the ESRP is internal guidance to NRC staff*

The ISG provides interim guidance to the 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. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants*

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 below—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 ESP) 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 ISG in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the ISG 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.

3. *The NRC's consideration of environmental impacts to address the requirements of the National Environmental Policy Act of 1969 (NEPA) are outside the scope of matters subject to backfitting protection, and are not a violation of issue finality provisions*

The NRC's consideration of environmental impacts to address the requirements of the National Environmental Policy Act of 1969 (NEPA), and an applicant's submission of environmental information needed to support the NRC's consideration of environmental impacts under NEPA, do not fall within the scope of matters which constitute backfitting. Consideration of environmental impacts to address NEPA compliance falls within the scope of matters protected under issue finality provisions of an ESP and a COL application referencing an ESP. However, this protection applies only after an ESP is issued, or if a COL application references an ESP. The NRC staff does not intend to apply the guidance to already-issued ESPs or COL applications referencing an ESP. Therefore, issuance of this ISG does not constitute a violation or inconsistency of the issue finality provisions applicable to ESPs or COL applications referencing an ESP.

Congressional Review Act

This ISG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 25th day of August, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, Policy Branch, Division of Advanced Reactor and Rulemaking, Office of New Reactors.

[FR Doc. 2014–20976 Filed 9–2–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0142]

Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; extension of public comment period.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published on June 18, 2014, a notice requesting public comment on draft Interim Staff Guidance (ISG), FSME–ISG–02, ''Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery

Licensing Actions.'' The purpose of this notice is to extend the comment period for the draft ISG. The public comment period was originally scheduled to close on September 2, 2014. The NRC has decided to extend the public-comment period on this document until November 17, 2014, to allow more time for members of the public to submit their comments.

DATES: The due date of comments requested in the document published on June 18, 2014 (79 FR 34792) is extended. Comments should be filed no later than November 17, 2014. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0142. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Diana Diaz Toro, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0930; email: *Diana.Diaz-Toro@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0142 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0142.
- 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 draft ISG, FSME–ISG–02, is available in ADAMS under Accession No. ML14163A049.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0142 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

On June 18, 2014 (79 FR 34792), the NRC published a request for public comments on draft ISG FSME–ISG–02, ''Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions.'' The purpose of this draft ISG is to assist NRC staff in conducting the Section 106 process of the National Historic Preservation Act of 1966, as amended (NHPA), specific to uranium recovery licensing actions. This guidance document is primarily intended for the NRC staff and does not impose regulatory requirements. This draft ISG also provides useful information to participants in the Section 106 process for uranium recovery licensing actions. The public comment period was originally scheduled to close on September 2, 2014. The NRC has decided to extend the public comment period on this document until November 17, 2014, to allow more time for members of the public to submit their comments.

Dated at Rockville, Maryland, this 26th day of August 2014.

For the U.S. Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–20996 Filed 9–2–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–10; NRC–2013–0002]

Northern States Power Company; Prairie Island Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has docketed a license amendment application from Northern States Power Company (NSPM). NSPM is requesting a revision to the Technical Specifications of the TN–40 and TN–40HT casks utilized at the Prairie Island Independent Spent Fuel Storage Installation located in Welch, Minnesota. The NRC is evaluating whether approval of this request would be categorically excluded from the requirement to prepare an environmental assessment.

DATES: A request for a hearing must be filed by November 3, 2014. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by September 15, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0002 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–2013–0002. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; 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 in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9225; email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated May 23, 2014, a license amendment application from Northern States Power Company (NSPM), requesting a revision to the Technical Specifications of the TN–40 and TN–40HT casks utilized at its Prairie Island independent spent fuel storage installation located in Welch, Minnesota (ADAMS Accession No. ML14143A202). License No. SNM–2506 authorizes the licensee to receive, store, and transfer spent fuel from Prairie Island Nuclear Station Units 1 and 2. Specifically, the proposed amendment request seeks to revise the cask cavity pressurization requirements and their technical bases for the spent fuel storage casks.

An NRC administrative completeness review, documented in a letter to NSPM dated July 30, 2014, found the application acceptable to begin a technical review (ADAMS Accession No. ML14213A039). The NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) has docketed this application under docket number 72–10. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. SNM–2506. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a safety evaluation report. In the amendment request, NSPM asserted that the proposed amendment satisfies the categorical exclusion criteria of 10 CFR 51.22(c)(11). The NRC will evaluate this assertion and make findings consistent with the National Environmental Policy Act (NEPA) and 10 CFR Part 51.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located in One White Flint North, Room O1–F21 (first floor), 11555 Rockville Pike, Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from the

date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by November 3, 2014. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by November 3, 2014.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking

and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 25th day of August, 2014.

For the Commission.

Timothy Lupold,

Acting Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2014–21000 Filed 9–2–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Joint Meeting of the ACRS Subcommittees on Plant License Renewal and Structural Analysis

The ACRS Subcommittees on Plant License Renewal and Structural Analysis will hold a meeting on September 19, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Friday, September 19, 2014—8:30 a.m. Until 6 p.m.

The Subcommittee will discuss the effects of concrete degradation on nuclear plant related infrastructure. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Department of Energy, Electric Power Research Institute and other interested persons regarding this matter. The combined Subcommittees will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or Email: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 FR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 26, 2014.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–20982 Filed 9–2–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability & PRA

The ACRS Subcommittee on Reliability & PRA will hold a meeting on September 18, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 18, 2014—8:30 a.m. Until 5 p.m.

The Subcommittee will review and discuss the progress of the National Fire Protection Association (NFPA) 805 transition for non-pilot plants. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 FR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 26, 2014.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–20980 Filed 9–2–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Fukushima; Notice of Meeting

The Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Fukushima will hold a meeting on September 16, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 16, 2014—8:30 a.m. Until 12 p.m.

The Subcommittee will review and discuss the staff's activities and progress regarding reactor and containment instrumentation for severe accident monitoring. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 FR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 26, 2014.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–20960 Filed 9–2–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability & PRA; Notice of Meeting

The ACRS Subcommittee on Reliability & PRA will hold a meeting on September 15, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, September 15, 2014—1:00 p.m. Until 5:00 p.m.

The Subcommittee will be briefed on the development of Interim Staff Guidance on Probabilistic Risk Assessment (PRA) requirements for the Advanced Light Water Reactor (ALWR) license applications under 10 CFR Part 52. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Hossein Nourbakhsh (Telephone 301–415–5622 or Email: *Hossein.Nourbakhsh@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 FR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the

meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 26, 2014.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–20973 Filed 9–2–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31226; File No. 812–14299]

Advisors Series Trust and Vivaldi Asset Management, LLC; Notice of Application

August 27, 2014.

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.

SUMMARY: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Advisors Series Trust (the ''Trust'') and Vivaldi Asset Management, LLC (the ''Advisor'').

DATES: The application was filed on April 10, 2014 and amended on August 8, 2014.

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 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 September 22, 2014, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, 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: Advisors Series Trust, 615 East Michigan Street, Milwaukee, WI 53202 and Vivaldi Asset Management, LLC, 1622 Willow Road, Suite 101, Northfield, IL 60093.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (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.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust offers multiple series (each a ''Fund'' and together the ''Funds''), two of which will be advised by the Advisor, each with its own investment objectives, policies, and restrictions.[1]

2. The Advisor, a limited liability company organized under Delaware law, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Advisor will serve as investment adviser to the Funds pursuant to an investment advisory agreement with the Trust (the ''Advisory Agreement''),[2] approved by the board of trustees of the Trust (each a ''Board''),[3] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust, the Funds, or the Advisor (the ''Independent Trustees'') and by the shareholders of a Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. Applicants are not seeking any exemptions from the provisions of the Act with respect to any Advisory Agreement.[4]

3. Under the terms of the Advisory Agreement, the Advisor will provide the Funds with overall investment management services and, as it deems appropriate, will continuously review, supervise, and administer each Fund's investment program, subject to the supervision of, and policies established by, the Board. For the investment management services it will provide to a Fund, the Advisor will receive the fee specified in the Advisory Agreement from that Fund. The Advisory Agreement will permit the Advisor to delegate certain responsibilities to one or more investment subadvisers (each, a ''Sub-Advisor''), to manage all or a portion of the assets of each Fund pursuant to an investment subadvisory agreement with a Sub-Advisor (''Sub-Advisory Agreement''). Each Sub-Advisor is, and any future Sub-Advisor will be, an ''investment adviser,'' as defined in section 2(a)(20) of the Act, and registered as an investment adviser under the Advisers Act, or not subject to such registration. The Advisor evaluates, allocates assets to, and oversees the Sub-Advisors, and make

[1] Applicants also request relief with respect to any existing or future series of the Trust or any other registered open-end management investment company that: (a) Is advised by the Advisor, or by a person controlling, controlled by or under common control with the Advisor or its successor (included in the term ''Advisor''); (b) uses the manager of managers structure (''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the application. The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. 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. If the name of any Fund contains the name of a Sub-Advisor (as defined below), the name of the Advisor will precede the name of the Sub-Advisor.

[2] ''Advisory Agreement'' includes advisory agreements with an Advisor for the Funds and any future Funds.

[3] The board of trustees of any future Fund is included in the term ''Board''.

[4] Orinda Asset Management, LLC (''Orinda'') is the current investment adviser to the Funds. Pursuant to a prior order, *In the Matter of Advisors Series Trust and Orinda Asset Management, LLC,* Investment Company Act Release Nos. 30043 (April 23, 2012) (notice) and 30065 (May 21, 2012) (order), the Funds currently operate in a Manager of Managers Structure. Orinda has indicated its intention to resign as investment adviser to the Funds. The Board, including a majority of the Independent Trustees, has determined to approve the engagement of the Advisor as investment adviser to the Funds, effective upon the resignation of Orinda. The Advisor has determined not to accept the engagement as investment adviser, and Orinda has agreed not to resign as investment adviser, unless and until (i) shareholder approval to the engagement of the Advisor as investment adviser is obtained, and (ii) the relief requested is granted.

recommendations about their hiring, termination, and replacement to the Board, at all times subject to the authority of the Board. The Advisor will compensate the Sub-Advisors out of the advisory fee paid by the Funds to the Advisor under the Advisory Agreement.

4. Applicants request an order to permit the Advisor, subject to Board approval, to engage Sub-Advisors to manage all or a portion of the assets of a Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Advisor that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Trust, a Fund, or the Advisor, other than by reason of serving as Sub-Advisor to one or more of the Funds (''Affiliated Sub-Advisor'').

5. Applicants also request an order exempting each Fund from certain disclosure provisions described below that may require the Funds to disclose fees paid by the Advisor to Sub-Advisors. Applicants seek an order to permit each Fund to disclose (as both a dollar amount and as a percentage of a Fund's net assets) only: (a) The aggregate fees paid to the Advisor and any Affiliated Sub-Advisor; and (b) the aggregate fees paid to Sub-Advisors other than Affiliated Sub-Advisors (collectively, the ''Aggregate Fee Disclosure''). A Fund that employs an Affiliated Sub-Advisor will provide separate disclosure of any fees paid to the Affiliated Sub-Advisor.

6. The Funds will inform shareholders of the hiring of a new Sub-Advisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for a Fund, the Fund will send its shareholders either a Multi-Manager Notice or a Multi-Manager Notice and Multi-Manager Information Statement; [5] and (b) the Fund will make the Multi-Manager Information Statement available on the Web site identified in the Multi-Manager Notice no later than when the Multi-Manager Notice (or Multi-Manager Notice and Multi-Manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. 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 provision of the Act, or from any rule thereunder, if such 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. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect each Fund's Advisor, subject to the review and approval of the Board, to select Sub-Advisors who are best suited to achieve the Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisor is substantially equivalent to the role of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose unnecessary delays and expenses on the Funds, and may preclude a Fund from acting promptly when the applicable Board and Advisor believe that a change would benefit the Fund and its shareholders. Applicants note that the Advisory Agreements and any sub-advisory agreement with an Affiliated Sub-Advisor will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. Applicants assert that the requested disclosure relief would benefit shareholders of the Funds because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that the Advisor may be able to negotiate rates that are below a Sub-Advisor's ''posted'' amounts, if the Advisor is not required to disclose the Sub-Advisors' fees to the public. Applicants submit that the requested relief will encourage Sub-Advisors to negotiate lower sub-advisory fees with the Advisor if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

[5] A ''Multi-Manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Advisor; (b) inform shareholders that the Multi-Manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-Manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-Manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-Manager Information Statement may be obtained, without charge, by contacting the Fund. A ''Multi-Manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-Manager Information Statements will be filed electronically with the Commission via the EDGAR system.

2. The prospectus for each Fund will disclose the existence, substance and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the Manager of Managers Structure described in the application. The prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisors and recommend their hiring, termination and replacement.

3. The Funds will inform shareholders of the hiring of a new Sub-Advisor within 90 days after the hiring of that new Sub-Advisor pursuant to the Modified Notice and Access Procedures.

4. The Advisor will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Advisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Sub-Advisor change is proposed for a Fund with an Affiliated Sub-Advisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. Each Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Advisor during the applicable quarter.

9. Whenever a Sub-Advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. The Advisor will provide general management services to a Fund, including overall supervisory responsibility for the general management and investment of a Fund's assets and, subject to review and approval of the Board, will (i) set a Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisors to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-Advisors; (iv) monitor and evaluate the performance of Sub-Advisors; and (v) implement procedures reasonably designed to ensure that the Sub-Advisors comply with a Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust or of a Fund, or director, manager or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Advisor, except for (i) ownership of interests in the Advisor or any entity that controls, is controlled by or is under common control with the Advisor; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by or is under common control with a Sub-Advisor.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. Any new Sub-Advisory Agreement or any amendment to an existing Advisory Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by a Fund will be submitted to the Fund's shareholders for approval.

14. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–20869 Filed 9–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 4, 2014 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, 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:

Settlement of injunctive actions;

Institution 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: August 28, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21005 Filed 8–29–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72933; File No. SR–BATS–2014–036]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

August 27, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 recently filed a proposed rule change to adopt two new routing options called ''SWPA'' and ''SWPB'' (collectively the ''SWP routing strategies'').[6] The Exchange notes that SWPA is substantively identical to, and SWPB is similar to, the Exchange's current Parallel T routing strategy.[7]

The Exchange now proposes to modify its fee schedule to adopt fees applicable to the SWP routing strategies that are identical to the current fees charged for Parallel T. For order routed pursuant to the SWP routing strategies and executed on an away trading venue, the Exchange proposes to charge $0.033 per share in securities priced at or above $1.00 and 0.33% of the total dollar value of the execution for securities priced below $1.00. The Exchange proposes to implement the amendments to its fee schedule on August 15, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed changes to the Exchange's fee schedule to add fees for the SWP routing strategies represents [sic] an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because they are identical to the fees charged for executions through an analogous routing strategy, Parallel T, which is currently offered by the Exchange. Lastly, the Exchange notes that the use of the SWP routing strategies is voluntary and believes that the proposed change is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange through the SWP routing strategies the proposed fee is equal to the fee currently charged for Parallel T routing. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the deem fee structures to be unreasonable or excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 thereunder.[11] 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–BATS–2014–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–036. This file number should be included on the

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] *See* SR–BATS–2014–033, filed on August 11, 2014, *available at http://www.batstrading.com/regulation/rule_filings/bzx/.*

[7] In order to allow a gradual migration from Parallel T to the proposed SWP routing strategies the Exchange is not proposing to eliminate Parallel T when it starts offering the SWP routing strategies. Instead, the Exchange proposes to continue to accept orders designated for Parallel T routing and will eventually retire such routing strategy and remove reference to the routing strategy from Exchange rules once all affected Users have been migrated away from Parallel T to the SWP routing strategies.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

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–BATS–2014–036 and should be submitted on or before September 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–20868 Filed 9–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72932; File No. SR–BYX–2014–017]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

August 27, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 recently filed a proposed rule change to adopt two new routing options called ''SWPA'' and ''SWPB'' (collectively the ''SWP routing strategies'').[6] The Exchange notes that SWPA is substantively identical to, and SWPB is similar to, the Exchange's current Parallel T routing strategy.[7]

The Exchange now proposes to modify its fee schedule to adopt fees applicable to the SWP routing strategies that are identical to the current fees charged for Parallel T. For order routed pursuant to the SWP routing strategies and executed on an away trading venue, the Exchange proposes to charge $0.033 per share in securities priced at or above $1.00 and 0.33% of the total dollar value of the execution for securities priced below $1.00. The Exchange proposes to implement the amendments to its fee schedule on August 15, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed changes to the Exchange's fee schedule to add fees for the SWP routing strategies represents [sic] an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because they are identical to the fees charged for executions through an analogous routing strategy, Parallel T, which is currently offered by the Exchange. Lastly, the Exchange notes that the use of the SWP routing strategies is voluntary and believes that the proposed change is non-discriminatory because it applies uniformly to all Members.

[12] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] *See* SR–BYX–2014–015, filed on August 11, 2014, *available at http://www.batstrading.com/regulation/rule_filings/byx/.*

[7] In order to allow a gradual migration from Parallel T to the proposed SWP routing strategies the Exchange is not proposing to eliminate Parallel T when it starts offering the SWP routing strategies. Instead, the Exchange proposes to continue to accept orders designated for Parallel T routing and will eventually retire such routing strategy and remove reference to the routing strategy from Exchange rules once all affected Users have been migrated away from Parallel T to the SWP routing strategies.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange through the SWP routing strategies the proposed fee is equal to the fee currently charged for Parallel T routing. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the deem fee structures to be unreasonable or excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 thereunder.[11] 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–BYX–2014–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2014–017. 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–BYX–2014–017 and should be submitted on or before September 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–20867 Filed 9–2–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72937; File No. SR–NYSEArca–2014–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of Eight PIMCO Exchange-Traded Funds Under NYSE Arca Equities Rule 8.600

August 27, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 15, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): PIMCO StocksPLUS® Absolute Return Exchange-Traded Fund, PIMCO Small Cap StocksPLUS® AR Strategy Exchange-Traded Fund, PIMCO Fundamental IndexPLUS® AR Exchange-Traded Fund, PIMCO Small Company Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund, PIMCO EM Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund, PIMCO International Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund, PIMCO EM StocksPLUS® AR Strategy Exchange-Traded Fund, and PIMCO International StocksPLUS® AR Strategy Exchange-Traded Fund (Unhedged). The text of 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares: [5] PIMCO StocksPLUS® Absolute Return Exchange-Traded Fund (''StocksPLUS AR Fund''), PIMCO Small Cap StocksPLUS® AR Strategy Exchange-Traded Fund (''Small Cap StocksPLUS AR Fund''), PIMCO Fundamental IndexPLUS® AR Exchange-Traded Fund (''Fundamental IndexPLUS Fund''), PIMCO Small Company Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund (''Small Company Fundamental IndexPLUS Fund''), PIMCO EM Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund (''EM Fundamental IndexPLUS Fund''), PIMCO International Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund (''International Fundamental IndexPLUS Fund''), PIMCO EM StocksPLUS® AR Strategy Exchange-Traded Fund (''EM StocksPLUS Fund''), and PIMCO International StocksPLUS® AR Strategy Exchange-Traded Fund (Unhedged) (''International StocksPLUS Fund''), each also referred to as a ''Fund'' and collectively referred to as the ''Funds.'' The Shares will be offered by PIMCO ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6]

The investment manager to the Funds will be Pacific Investment Management Company LLC (''PIMCO'' or the ''Adviser''). Research Affiliates, LLC (''Research Affiliates'' or the ''Sub-Adviser''), will be the sub-adviser with respect to the Fundamental IndexPLUS Fund, Small Company Fundamental IndexPLUS Fund, EM Fundamental IndexPLUS Fund, and the International Fundamental IndexPLUS Fund. PIMCO Investments LLC will serve as the distributor for the Funds (''Distributor''). State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Funds (''Custodian'' or ''Transfer Agent'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Funds' portfolios. The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. If PIMCO elects to hire a sub-adviser for a Fund that is also affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to that Fund's portfolio.

In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Characteristics of the Funds [8]

According to the Registration Statement, in selecting investments for each Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy, will analyze credit and call risks, and will use other investment selection techniques. The proportion of each Fund's assets committed to investment in securities with particular characteristics (such as quality, sector, interest rate or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets and other factors.

With respect to each Fund, in seeking to identify undervalued currencies,

[4] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On January 27, 2014, the Trust filed an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''1933 Act'') and the 1940 Act relating to the Funds (File Nos. 333–155395 and 811–22250) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] Many of the investment strategies of the Funds are discretionary, which means that PIMCO can decide from time to time whether to use them or not.

PIMCO may consider many factors, including, but not limited to, longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO will identify these areas by grouping fixed income investments into sectors such as money markets, governments, corporates, mortgages, asset-backed and international. Sophisticated proprietary software will then assist in evaluating sectors and pricing specific investments. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads and other factors.

Fixed Income Instruments

Among other investments described in more detail herein, each Fund may invest in Fixed Income Instruments, which include:

- Securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities'');
- corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; [9]
- mortgage-backed and other asset-backed securities; [10]
- inflation-indexed bonds issued both by governments and corporations; [11]
- structured notes, including hybrid or ''indexed'' securities, and event-linked bonds,[12] subject to a limitation of 20% of a Fund's total assets invested in such instruments;
- bank capital and trust preferred securities; [13]
- loan participations and assignments,[14] subject to a limitation of 20% of a Fund's total assets invested in such instruments;
- delayed funding loans and revolving credit facilities;
- bank certificates of deposit, fixed time deposits and bankers' acceptances;
- repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; [15]
- debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises (''Municipal Bonds'');
- obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and
- obligations of international agencies or supranational entities.

Use of Derivatives by the Funds

Each Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with a Fund's investment objective and policies. With respect to each Fund, derivative instruments will include the following: forwards; [16] exchange-traded and over-the-counter (''OTC'') options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded and OTC options on futures contracts; and OTC options on swap agreements.[17] Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. All investment guidelines and limitations stated herein apply to a Fund's aggregate investment exposure to a particular type of investment that is the subject of the guideline or limitation, whether such exposure is obtained through direct holdings or through derivative instruments.[18]

As described further below, each Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. A Fund may also use derivative instruments to enhance

[9] With respect to each Fund, while non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for a Fund, at least 80% of issues of such securities held by a Fund must have $100 million or more par amount outstanding at the time of investment. *See also* note 25, *infra,* regarding emerging market corporate debt securities.

[10] Mortgage-related and other asset-backed securities include collateralized mortgage obligations (''CMOs''), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. A to-be-announced (''TBA'') transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[11] Inflation-indexed bonds (other than municipal inflation-indexed bonds and certain corporate inflation-indexed bonds) are fixed income securities whose principal value is periodically adjusted according to the rate of inflation (*e.g.,* Treasury Inflation Protected Securities (''TIPS'')). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate plus the Consumer Price Index for All Urban Consumers (''CPI''). With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

[12] The Funds may obtain event-linked exposure by investing in ''event-linked bonds'' or ''event-linked swaps'' or by implementing ''event-linked strategies.'' Event-linked exposure results in gains or losses that typically are contingent, or formulaically related to defined trigger events. Examples of trigger events include hurricanes, earthquakes, weather-related phenomena, or statistics relating to such events. Some event-linked bonds are commonly referred to as ''catastrophe bonds.'' If a trigger event occurs, a Fund may lose a portion or its entire principal invested in the bond or notional amount on a swap.

[13] There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically exchange-traded and often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock. Tier II securities are typically traded over-the-counter, are often perpetual (with no maturity date), callable and, under certain conditions, allow for the issuer bank to withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

[14] The Funds may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans.

[15] A repurchase agreement involves the Fund purchasing a security from a bank or broker-dealer, which agrees to purchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. Reverse repurchase agreements, which involves the sale of a security by the Fund and its agreement to repurchase the instrument at a specified time and price, are subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

[16] Forwards are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time (forward commitments).

[17] In the future, in the event that there are exchange-traded options on swaps, a Fund may invest in these instruments.

[18] Each Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation. According to the Registration Statement, each Fund has adopted procedures that are consistent with Section 18 of the 1940 Act and related Commission guidance, which require that a fund's derivative instruments be fully collateralized by liquid assets of the fund.

returns. To limit the potential risk associated with such transactions, a Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees (''Board'') and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, each Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a Fund, including a Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[19] Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for a Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that each Fund would otherwise purchase. For example, a Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (*e.g.,* differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (*e.g.,* interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or ''tail risks'') in each Fund.

Each Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by ''selling protection'' against default or other credit events, or to hedge broad market credit risk by ''buying protection.'' Single name credit default swaps (CDS) can be used to allow a Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. A Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be much more efficient than buying underlying securities of an index, potentially lowering transaction costs.[20]

The Adviser believes that the use of derivatives will allow each Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (*i.e.,* covered calls).

StocksPLUS AR Fund—Principal Investments

According to the Registration Statement, the Fund will seek total return which exceeds the total return of its benchmark, the S&P 500 Index (the ''S&P 500'').[21]

The Fund will seek to achieve its investment objective by investing, under normal circumstances,[22] in S&P 500 derivatives backed by a portfolio of Fixed Income Instruments that are managed using an absolute return approach. In seeking total return exceeding that of the S&P 500, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein. S&P 500 derivatives may be purchased with a small fraction of the assets that would be needed to purchase S&P 500 securities directly, so that the remainder of the Fund's assets may be invested in Fixed Income Instruments.

The Fund will typically seek to gain long exposure to the S&P 500 in an amount, under normal circumstances, approximately equal to the Fund's net assets, by investing in S&P 500 derivatives. The value of S&P 500 derivatives should closely track changes in the value of the S&P 500. The Fund will normally use S&P 500 derivatives, instead of S&P 500 stocks, to attempt to equal or exceed the daily performance of the S&P 500. Though the Fund will not normally invest directly in S&P 500 stocks, when S&P 500 derivatives appear to be overvalued relative to the S&P 500, the Fund may invest all of its assets in a ''basket'' of S&P 500 stocks. The Fund may also invest in exchange-traded funds based on the S&P 500, such as Standard & Poor's Depositary Receipts. The Fund will seek to remain invested in S&P 500 derivatives or S&P 500 stocks even when the S&P 500 is declining.

Assets not invested in S&P 500 derivatives or S&P 500 stocks may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return by using an absolute return approach. The absolute return approach, which applies to the portion of the portfolio not invested in S&P 500 derivatives or S&P 500 stocks, will allow the Fund more discretion with respect to overall sector exposures, non-U.S. exposures and credit quality, both as a function of the strategy's investment guidelines and lack of a fixed income benchmark (*i.e.,* the Fund seeks total return which exceeds that of the S&P 500). The absolute return approach will apply to the fixed income (but not the equity index replicating) strategy of the Fund, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.[23]

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[24]

[19] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[20] The Adviser will evaluate the creditworthiness of swaps counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's analysts will evaluate each approved counterparty using various methods of analysis, which may include evaluation of the counterparty's liquidity in the event of default, the broker-dealer's reputation, the Adviser's past experience with the broker-dealer and disciplinary history and its share of market participation.

[21] The S&P 500 Index is composed of 500 selected common stocks that represent approximately two-thirds of the total market value of all U.S. common stocks.

[22] With respect to each of the Funds, the term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as a systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[23] With respect to each Fund, duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[24] PIMCO will generally consider an instrument to be economically tied to a non-U.S. country if the

The Fund may invest in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers, subject to applicable limitations set forth herein. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.[25]

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis [26] and invest in foreign currency futures contracts and exchange-traded and OTC options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[27]

StocksPLUS AR Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.[28]

The Fund may invest up to 20% of its total assets in: (i) Variable and floating rate securities [29] that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments.

The Fund may also invest up to 20% of its total assets in trade claims,[30] privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds, which are securities created through the exchange of existing commercial bank loans to sovereign entities for new obligations in connection with a debt restructuring. The Fund may invest up to 20% of its total assets in bank loans.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments, which involve, like repurchase agreements on Fixed Income Instruments mentioned above, the Fund purchasing a security from a bank or broker-dealer that agrees to purchase the security at the Fund's cost plus interest within a specified time. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the

issuer is a foreign government (or any political subdivision, agency, authority or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country. With respect to derivative instruments, PIMCO will generally consider such instruments to be economically tied to non-U.S. countries if the underlying assets are foreign currencies (or baskets or indexes of such currencies), or instruments or securities that are issued by foreign governments or issuers organized under the laws of a non-U.S. country (or if the underlying assets are certain money market instruments, if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country).

[25] PIMCO will generally consider an instrument to be economically tied to an emerging market country if the security's ''country of exposure'' is an emerging market country, as determined by the criteria set forth in the Registration Statement. Alternatively, such as when a ''country of exposure'' is not available or when PIMCO believes the following tests more accurately reflect which country the security is economically tied to, PIMCO may consider an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market country (or any political subdivision, agency, authority or instrumentality of such government), if the issuer or guarantor is organized under the laws of an emerging market country, or if the currency of settlement of the security is a currency of an emerging market country. With respect to derivative instruments, PIMCO will generally consider such instruments to be economically tied to emerging market countries if the underlying assets are currencies of emerging market countries (or baskets or indices of such currencies), or instruments or securities that are issued or guaranteed by governments of emerging market countries or by entities organized under the laws of emerging market countries. PIMCO will have broad discretion to identify countries that it would consider to qualify as emerging markets. In making investments in emerging market securities, the Fund will emphasize those countries with relatively low gross national product per capita and with the potential for rapid economic growth. Emerging market countries are generally located in Asia, Africa, the Middle East, Latin America and Eastern Europe. PIMCO will select the country and currency composition based on its evaluation of relative interest rates, inflation rates, exchange rates, monetary and fiscal policies, trade and current account balances, legal and political developments and any other specific factors it believes to be relevant. While emerging markets corporate debt securities (excluding commercial paper) generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $200 million or more par amount outstanding at the time of investment.

[26] With respect to each of the Funds, a forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, would reduce a Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of a Fund would be similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell a foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. A Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, see *www.bis.org.*

[27] Each of the Funds may make short sales of securities to: (i) offset potential declines in long positions in similar securities, (ii) to increase the flexibility of the Fund; (iii) for investment return; and (iv) as part of a risk arbitrage strategy.

[28] Convertible securities are generally preferred stocks and other securities, including fixed income securities and warrants, that are convertible into or exercisable for common stock at a stated price or rate. Equity-related investments may include investments in small-capitalization (''small-cap''), mid-capitalization (''mid-cap'') and large-capitalization (''large-cap'') companies. With respect to each Fund, a small-cap company will be defined as a company with a market capitalization of up to $1.5 billion, a mid-cap company will be defined as a company with a market capitalization of between $1.5 billion and $10 billion and a large-cap company will be defined as a company with a market capitalization above $10 billion. Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[29] Variable and floating rate securities pay interest at rates that adjust whenever a specified interest rate changes or that reset on predetermined dates (such as the last day of a month or calendar quarter).

[30] The Fund may purchase trade claims and similar obligations or claims against companies in bankruptcy proceedings. Trade claims are non-securitized rights of payment arising from obligations that typically arise when vendors and suppliers extend credit to a company by offering payment terms for products and services. If the company files for bankruptcy, payments on these trade claims stop and the claims are subject to compromise along with the other debts of the company. Trade claims may be purchased directly from the creditor or through brokers.

Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings.[31] The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's Investors Service, Inc. (''Moody's''), or equivalently rated by Standard & Poor's Ratings Services (''S&P'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality [32] (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

Small Cap StocksPLUS AR Fund—Principal Investments

According to the Registration Statement, the Fund will seek total return which exceeds the total return of its benchmark, the Russell 2000 Index (the ''Russell 2000'').[33]

The Fund will seek to achieve its investment objective by investing, under normal circumstances,[34] in Russell 2000 derivatives backed by a portfolio of Fixed Income Instruments that are managed using an absolute return approach. In seeking total return exceeding that of the Russell 2000, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein. Russell 2000 derivatives may be purchased with a small fraction of the assets that would be needed to purchase Russell 2000 securities directly, so that the remainder of the Fund's assets may be invested in Fixed Income Instruments.

The Fund will typically seek to gain long exposure to the Russell 2000 in an amount, under normal circumstances, approximately equal to the Fund's net assets, by investing in Russell 2000 derivatives. The value of Russell 2000 derivatives should closely track changes in the value of the Russell 2000. The Fund will normally use Russell 2000 derivatives, instead of Russell 2000 stocks, to attempt to equal or exceed the daily performance of the Russell 2000. Though the Fund will not normally invest directly in Russell 2000 stocks, when Russell 2000 derivatives appear to be overvalued relative to the Russell 2000, the Fund may invest all of its assets in a ''basket'' of Russell 2000 stocks. The Fund may also invest in exchange-traded funds based on the Russell 2000. The Fund will seek to remain invested in Russell 2000 derivatives or Russell 2000 stocks even when the Russell 2000 is declining.

Assets not invested in Russell 2000 derivatives or Russell 2000 stocks may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return by using an absolute return approach. The absolute return approach, which applies to the portion of the portfolio not invested in Russell 2000 derivatives or Russell 2000 stocks, will allow the Fund more discretion with respect to overall sector exposures, non-U.S. exposures and credit quality, both as a function of the strategy's investment guidelines and lack of a fixed income benchmark (*i.e.,* the Fund seeks total return which exceeds that of the Russell 2000). The absolute return approach will apply to the fixed income component of the Fund, but will not apply to the equity index replicating component of the Fund, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.[35]

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[36] The Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.[37]

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures contracts and exchange-traded and OTC options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

Small Cap StocksPLUS AR Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.

The Fund may invest up to 20% of its total assets in: (i) Variable and floating rate securities that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments.

The Fund may also invest up to 20% of its total assets in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds. The Fund may invest up to 20% of its total assets in bank loans.

[31] With respect to each Fund, a reverse repurchase agreement involves the sale of a security by the Fund and its agreement to repurchase the instrument at a specified time and price.

[32] In determining whether a security is of comparable quality, the Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

[33] The Russell 2000 Index is composed of 2000 of the smallest companies in the Russell 3000 Index, which represents approximately 10% of the total market capitalization of the Russell 3000 Index.

[34] *See supra,* note 22.

[35] *See supra,* note 23.

[36] *See supra,* note 24.

[37] *See supra,* note 25.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

Fundamental IndexPLUS Fund—Principal Investments

According to the Registration Statement, the Fund will seek total return [38] which exceeds the total return of its benchmark, the S&P 500. The Fund will seek to achieve its investment objective by investing, under normal circumstances, in derivatives based on a Research Affiliates Fundamental Index (''RAFI''), the Enhanced RAFI® US Large (''RAFI Large Company Index'') [39] backed by a portfolio of Fixed Income Instruments, which may be represented by derivatives, that are managed using an absolute return approach. In seeking total return exceeding that of the S&P 500, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

The Fund will use RAFI Large Company Index derivatives in addition to, or in place of, RAFI Large Company Index component securities, in an attempt to equal or exceed the daily performance of the S&P 500. The value of RAFI Large Company Index derivatives should closely track changes in the value of the RAFI Large Company Index. Though the Fund will not normally invest directly in RAFI Large Company Index stocks, when RAFI Large Company Index derivatives appear to be overvalued relative to RAFI Large Company Index stocks, the Fund may invest all of its assets in a ''basket'' of RAFI Large Company Index stocks. The Fund may also invest in exchange-traded funds. The Fund will seek to remain invested in RAFI Large Company Index derivatives or RAFI Large Company Index stocks even when the RAFI Large Company Index is declining.

The Sub-Adviser will provide investment advisory services in connection with the Fund's use of the RAFI Large Company Index by, among other things, providing PIMCO (or counterparties designated by PIMCO) with a model portfolio reflecting the composition of the RAFI Large Company Index for purposes of developing RAFI Large Company Index derivatives. The Fund will typically seek to gain exposure to the RAFI Large Company Index by investing in total return swap agreements. In a typical swap agreement, the Fund will receive the price appreciation (or depreciation) on the RAFI Large Company Index from the counterparty to the swap agreement in exchange for paying the counterparty an agreed upon fee. Research Affiliates will facilitate the Fund's use of RAFI Large Company Index derivatives by providing model portfolios of RAFI Large Company Index securities to the Fund's swap counterparties, so that the counterparties can provide total return swaps based on the RAFI Large Company Index to the Fund. If such swap agreements are not available, the Fund may invest in other derivative instruments, ''baskets'' of stocks, or RAFI Large Company Index component securities to replicate the performance of the RAFI Large Company Index.

The RAFI Large Company Index derivatives may be purchased with a small fraction of the assets that would be needed to purchase the equity securities directly, so that the remainder of the Fund's assets may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return utilizing an absolute return approach, which applies to the portion of the portfolio not invested in RAFI Large Company Index derivatives or RAFI Large Company Index stocks, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[40] The Fund may invest in securities denominated in foreign (non-U.S.) currencies and in U.S. dollar-denominated securities of foreign (non-U.S.) issuers, subject to applicable limitations set forth herein. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis [41] and invest in foreign currency futures contracts and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward

[38] Total return may consist of both income earned on the Fund's investments and capital appreciation, if any, arising from increases in the market value of the Fund's holdings. Capital appreciation of Fixed Income Instruments generally would result from decreases in market interest rates, foreign currency appreciation, or improving credit fundamentals for a particular market sector or security.

[39] The RAFI Large Company Index contains stocks of large U.S. listed companies weighted by the Fundamental Index® methodology with additional factors (such as, quality of earnings and economic profitability). The Fundamental Index® methodology is a patented indexing approach developed by Research Affiliates. The methodology weights companies by fundamental factors—including sales, cash flows, dividends and book value, with additional screens for quality of earnings, financial distress and other parameters—in an effort to enhance returns.

[40] *See supra,* note 24.

[41] *See supra,* note 26.

commitment basis and may engage in short sales.

Fundamental IndexPLUS Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.

The Fund may invest up to 20% of its total assets in: (i) Variable and floating rate securities that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments.

The Fund may also invest up to 20% of its total assets in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds. The Fund may invest up to 20% of its total assets in bank loans.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

Small Company Fundamental IndexPLUS Fund—Principal Investments

According to the Registration Statement, the Fund will seek total return which exceeds the total return of its benchmark, the Russell 2000®. The Fund will seek to achieve its investment objective by investing, under normal circumstances, in derivatives based on the Enhanced RAFI® US Small (''RAFI Small Company Index'') [42] backed by a diversified portfolio of Fixed Income Instruments, which may be represented by derivatives, that are managed using an absolute return approach. In seeking total return exceeding that of the Russell 2000, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

The Fund will use RAFI Small Company Index derivatives in addition to, or in place of, RAFI Small Company Index stocks, in an attempt to equal or exceed the daily performance of the Russell 2000. The values of RAFI Small Company Index derivatives should closely track changes in the value of the RAFI Small Company Index. Though the Fund will not normally invest directly in RAFI Small Company Index stocks, when RAFI Small Company Index derivatives appear to be overvalued relative to RAFI Small Company Index stocks, the Fund may invest all of its assets in a ''basket'' of RAFI Small Company Index stocks. The Fund may also invest in exchange-traded funds. The Fund will seek to remain invested in RAFI Small Company Index derivatives or RAFI Small Company Index stocks even when the RAFI Small Company Index is declining.

Research Affiliates will provide investment advisory services in connection with the Fund's use of the RAFI Small Company Index by, among other things, providing PIMCO (or counterparties designated by PIMCO), with a model portfolio reflecting the composition of the RAFI Small Company Index for purposes of developing RAFI Small Company Index derivatives. The Fund will typically seek to gain exposure to the RAFI Small Company Index by investing in total return swap agreements. In a typical swap agreement, the Fund will receive the price appreciation (or depreciation) on the RAFI Small Company Index from the counterparty to the swap agreement in exchange for paying the counterparty an agreed upon fee. Research Affiliates will facilitate the Fund's use of RAFI Small Company Index derivatives by providing a model portfolio of the RAFI Small Company Index to the Fund's swap counterparties, who in turn are able to provide total return swaps based on the RAFI Small Company Index to the Fund. If such swap agreements are not available, the Fund may invest in other derivative instruments, ''baskets'' of stocks, or individual securities to replicate the performance of the RAFI Small Company Index.

According to the Registration Statement, the Fund may purchase RAFI Small Company Index derivatives with a fraction of the assets that would be needed to purchase the equity securities directly, so that the remainder of the Fund's assets may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return utilizing an absolute return approach, which applies to the portion of the portfolio not invested in Russell 2000 derivatives or Russell 2000 stocks, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.[43]

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[44] The Fund may invest in securities denominated in foreign (non-U.S.) currencies and in U.S. dollar-denominated securities of foreign (non-U.S.) issuers, subject to applicable limitations set forth herein. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.[45]

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures contracts and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency

[42] The RAFI Small Company Index contains stocks of small U.S. listed companies weighted by the Fundamental Index ® methodology with additional factors (such as, quality of earnings and economic profitability).

[43] *See supra,* note 23.

[44] *See supra,* note 24.

[45] *See supra,* note 25.

fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts.

Small Company Fundamental IndexPLUS Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.

The Fund may invest up to 20% of its total assets in: (i) variable and floating rate securities that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments. The Fund may also invest up to 20% of its total assets in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds. The Fund may invest up to 20% of its total assets in bank loans.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

EM Fundamental IndexPLUS Fund—Principal Investments

According to the Registration Statement, the Fund will seek total return which exceeds the total return of its benchmark, the Morgan Stanley Capital International Emerging Markets Index (Net Dividends in USD) (''MSCI EM Index'').[46]

The Fund will seek to achieve its investment objective by investing, under normal circumstances, in derivatives based on the Enhanced RAFI® Emerging Markets (''RAFI EM Index'')[47] backed by a diversified portfolio of Fixed Income Instruments, which may be represented by derivatives, that are managed using an absolute return approach. In seeking total return exceeding that of the MSCI EM Index, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

The Fund will normally be expected to primarily use RAFI EM Index derivatives, in place of, or in addition to, RAFI EM Index stocks, in an attempt to equal or exceed the daily performance of the MSCI EM Index. The value of RAFI EM Index derivatives should closely track changes in the value of the RAFI EM Index. In addition to or instead of RAFI EM Index swaps, the Fund may invest in other derivative instruments, ''baskets'' of stocks, individual securities, and exchange-traded funds to maintain emerging markets equity exposure. The Fund may also invest in exchange-traded funds. The Fund will seek to remain invested in RAFI EM Index derivatives or RAFI EM Index stocks even when the RAFI EM Index is declining.

Research Affiliates will provide investment advisory services in connection with the Fund's use of the RAFI EM Index by, among other things, providing PIMCO (or counterparties designated by PIMCO) with a model portfolio reflecting the composition of RAFI EM Index for purposes of developing RAFI EM Index derivatives. The Fund will typically seek to gain exposure to the RAFI EM Index by investing in total return swap agreements. In a typical swap agreement, the Fund will receive the price appreciation (or depreciation) on the RAFI EM Index from the counterparty to the swap agreement in exchange for paying the counterparty an agreed upon fee. Research Affiliates will facilitate the Fund's use of RAFI EM Index derivatives by providing model portfolios of RAFI EM Index securities to the Fund's swap counterparties, so that the counterparties can provide total return swaps based on the RAFI EM Index to the Fund.

RAFI EM Index derivatives may be purchased with a fraction of the assets that would be needed to purchase RAFI EM Index equity securities directly, so that the remainder of the assets may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return by using an absolute return approach, which applies to the portion of the portfolio not invested in RAFI EM Index derivatives or RAFI EM Index stocks, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.[48]

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[49] The Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S.-dollar denominated securities of foreign issuers. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.[50]

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures contracts and exchange traded and OTC options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to

[46] The MSCI EM Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of 21 emerging markets.

[47] The RAFI EM Index contains emerging markets companies weighted by the Fundamental Index ® methodology with additional factors (such as, quality of earnings and economic profitability).

[48] *See supra,* note 23.

[49] *See supra,* note 24.

[50] *See supra,* note 25.

foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

EM Fundamental IndexPLUS Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.

The Fund may invest up to 20% of its total assets in: (i) variable and floating rate securities that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments.

The Fund may also invest up to 20% of its total assets in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds. The Fund may invest up to 20% of its total assets in bank loans.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

International Fundamental IndexPLUS Fund—Principal Investments

According to the Registration Statement, the International Fundamental IndexPLUS Fund will seek total return which exceeds the total return of its benchmark, the Morgan Stanley Capital International Europe, Australasia, Far East Index (''MSCI EAFE Index'').

The Fund will seek to achieve its investment objective by investing, under normal circumstances, in derivatives based on the Enhanced RAFI® International Large (''RAFI Developed Index'') [51] backed by a diversified portfolio of Fixed Income Instruments, which may be represented by derivatives, that are managed using an absolute return approach. In seeking total return exceeding that of the MSCI EAFE Index, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described therein.

The Fund will use RAFI Developed Index derivatives to attempt to equal or exceed the daily performance of the MSCI EAFE Index. The values of RAFI Developed Index derivatives should closely track changes in the value of the RAFI Developed Index. Though the Fund will not normally invest directly in RAFI Developed Index stocks, when RAFI Developed Index derivatives appear to be overvalued relative to the RAFI Developed Index, the Fund may invest all of its assets in a ''basket'' of RAFI Developed Index stocks. The Fund may also invest in exchange-traded funds. The Fund will seek to remain invested in RAFI Developed Index derivatives even when the RAFI Developed Index is declining.

Research Affiliates will provide investment advisory services in connection with the Fund's use of the RAFI Developed Index by, among other things, providing PIMCO (or counterparties designated by PIMCO) with a model portfolio reflecting the composition of the RAFI Developed Index for purposes of developing RAFI Developed Index derivatives. The Fund will typically seek to gain exposure to the RAFI Developed Index by investing in total return swap agreements. In a typical swap agreement, the Fund will receive the price appreciation (or depreciation) on the RAFI Developed Index from the counterparty to the swap agreement in exchange for paying the counterparty an agreed upon fee. Research Affiliates will facilitate the Fund's use of RAFI Developed Index derivatives by providing model portfolios of RAFI Developed Index securities to the Fund's swap counterparties, so that the counterparties can provide total return swaps based on the RAFI Developed Index to the Fund. If such swap agreements are not available, the Fund may invest in other derivative instruments, ''baskets'' of stocks, or individual securities to replicate the performance of the RAFI Developed Index.

According to the Registration Statement, RAFI Developed Index derivatives may be purchased with a fraction of the assets that would be needed to purchase the RAFI Developed Index equity securities directly, so that the remainder of the assets may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return by using an absolute return approach, which applies to the portion of the portfolio not invested in RAFI Developed Index derivatives or RAFI Developed Index stocks, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.[52]

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[53] With respect to the Fund's absolute return investments, the Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S.-dollar denominated securities of foreign issuers. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities

[51] The RAFI Developed Index contains stocks of large developed markets ex-U.S. companies weighted by the Fundamental Index® methodology with additional factors (such as, quality of earnings and economic profitability).

[52] *See supra,* note 23.

[53] *See supra,* note 24.

and instruments that are economically tied to emerging market countries.[54]

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures contracts and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

International Fundamental IndexPLUS Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.

The Fund may invest up to 20% of its total assets in: (i) Variable and floating rate securities that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments.

The Fund may also invest up to 20% of its total assets in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds. The Fund may invest up to 20% of its total assets in bank loans.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

EM StocksPLUS Fund—Principal Investments

According to the Registration Statement, the Fund will seek total return which exceeds the total return of its benchmark, the MSCI EM Index.

The Fund will seek to achieve its investment objective by investing, under normal circumstances, in MSCI EM Index derivatives, backed by a portfolio of Fixed Income Instruments that are managed using an absolute return approach. In seeking total return exceeding that of the MSCI EM Index, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

The Fund will typically seek to gain long exposure to the MSCI EM Index in an amount, under normal circumstances, approximately equal to the Fund's net assets, by investing in MSCI EM Index derivatives. The value of the MSCI EM Index derivatives should closely track changes in the value of the MSCI EM Index. The Fund will normally use MSCI EM Index derivatives, instead of MSCI EM Index stocks, to attempt to equal or exceed the daily performance of the MSCI EM Index. Though the Fund will not normally invest directly in MSCI EM Index stocks, when MSCI EM Index derivatives appear to be overvalued relative to the MSCI EM Index, the Fund may invest all of its assets in a ''basket'' of MSCI EM Index stocks. The Fund may also invest in exchange-traded funds based on the MSCI EM Index. The Fund will seek to remain invested in MSCI EM Index derivatives or MSCI EM Index stocks even when the MSCI EM Index is declining.

According to the Registration Statement, MSCI EM Index derivatives may be purchased with a small fraction of the assets that would be needed to purchase the MSCI EM Index equity securities directly, so that the remainder of the assets may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return by using an absolute return approach, which applies to the portion of the portfolio not invested in MSCI EM Index derivatives or MSCI EM Index stocks, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.[55]

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[56] The Fund may invest in debt and equity securities denominated in foreign (non-U.S.) currencies and in U.S.-dollar denominated securities of foreign (non-U.S.) issuers, subject to applicable limitations set forth herein. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.[57]

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures contracts and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward

[54] *See supra,* note 25.

[55] *See supra,* note 23.

[56] *See supra,* note 24.

[57] *See supra,* note 25.

commitment basis and may engage in short sales.

EM StocksPLUS Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.

The Fund may invest up to 20% of its total assets in: (i) Variable and floating rate securities that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments.

The Fund may also invest up to 20% of its total assets in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds. The Fund may invest up to 20% of its total assets in bank loans.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

International StocksPLUS Fund—Principal Investments

According to the Registration Statement, the International StocksPLUS Fund will seek total return which exceeds the total return of its benchmark, the MSCI EAFE Net Dividend Index, consistent with prudent investment management.[58]

The Fund will seek to achieve its investment objective by investing, under normal circumstances, in non-U.S. equity derivatives, backed by a portfolio of Fixed Income Instruments that are managed using an absolute return approach. In seeking total return exceeding that of the MSCI EAFE Net Dividend Index, or as part of the Fund's absolute return strategy relative to fixed income investing, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

The Fund typically will seek to gain long exposure to the MSCI EAFE Net Dividend Index in an amount, under normal circumstances, approximately equal to the Fund's net assets, by investing in non-U.S. equity derivatives. The value of the equity derivatives should closely track changes in the value of underlying securities or indices. The Fund will normally use equity derivatives, instead of stocks, to attempt to equal or exceed the daily performance of the MSCI EAFE Net Dividend Index. Though the Fund will not normally invest directly in stocks, when equity derivatives appear to be overvalued, the Fund may invest some or all of its assets in stocks. The Fund may also invest in exchange-traded funds. The Fund's equity exposure will not be hedged into U.S. dollars. The Fund will seek to remain invested in equity derivatives and/or stocks even when the MSCI EAFE Net Dividend Index is declining. The Fund may invest in non-U.S. equities or non-U.S. equity derivatives that do not comprise the MSCI EAFE Net Dividend Index.

According to the Registration Statement, derivatives may be purchased with a small fraction of the assets that would be needed to purchase the equity securities directly, so that the remainder of the assets may be invested in Fixed Income Instruments. PIMCO will actively manage the Fixed Income Instruments held by the Fund with a view toward enhancing the Fund's total return by using an absolute return approach, which applies to the portion of the portfolio not invested in MSCI EAFE Net Dividend Index derivatives or MSCI EAFE Net Dividend Index stocks, subject to an overall portfolio duration which will normally vary from (negative) 3 years to positive 8 years based on PIMCO's forecast for interest rates.[59]

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.[60] The Fund may invest in securities denominated in foreign currencies and in U.S.-dollar denominated securities of foreign issuers, subject to applicable limitations set forth herein. With respect to the Fund's absolute return investments, the Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Fund's absolute return investments, the Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.[61]

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward basis and invest in foreign currency futures contracts and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

International StocksPLUS Fund—Other (Non-Principal) Investments

With respect to the Fund's absolute return investments, the Fund may invest up to 10% of its total assets in preferred stocks, convertible securities and other equity-related securities.

The Fund may invest up to 20% of its total assets in: (i) Variable and floating rate securities that are not Fixed Income Instruments and (ii) floaters and inverse floaters that are not Fixed Income Instruments.

The Fund may also invest up to 20% of its total assets in trade claims,

[58] The MSCI EAFE Net Dividend Index is an unmanaged index of issuers in countries of Europe, Australia, and the Far East.

[59] *See supra,* note 23.

[60] *See supra,* note 24.

[61] *See supra,* note 25.

privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes. The Fund may invest up to 20% of its total assets in Brady Bonds. The Fund may invest up to 20% of its total assets in bank loans.

The Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings. The Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

Investment Limits Applicable to the Fund

The Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

The Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

Other Investment Limitations of the Funds

According to the Registration Statement, each Fund may invest without limit, for temporary or defensive purposes, in U.S. debt securities, including taxable securities and short-term money market securities, if PIMCO deems it appropriate to do so. If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of a Fund's assets in certain defensive strategies, including holding a substantial portion of a Fund's assets in cash, cash equivalents or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies or instrumentalities.

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

For the purpose of achieving income, each Fund may lend its portfolio securities to brokers, dealers, and other financial institutions, provided that a number of conditions are satisfied, including that the loan is fully collateralized. When a Fund lends portfolio securities, its investment performance will continue to reflect changes in the value of the securities loaned, and a Fund will also receive a fee or interest on the collateral. Cash collateral received by a Fund in securities lending transactions may be invested in short-term liquid Fixed Income Instruments or in money market or short-term mutual funds or similar investment vehicles, including affiliated money market or short-term mutual funds.

According to the Registration Statement, the Funds may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds, provided that each of a Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of that Fund's total assets. Each Fund may invest its securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act, including series of PIMCO Funds, an affiliated open-end management investment company managed by PIMCO.

Investment Restrictions

Each Fund's investments, including investments in derivative instruments, will be subject to all of the restrictions under the 1940 Act, including restrictions with respect to investments in illiquid securities, that is, the limitation that a fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser.[62] Each Fund will monitor its respective portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[63]

Each Fund will be diversified within the meaning of the 1940 Act.[64]

Each Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.[65]

No Fund will concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.[66]

Each of the Funds' investments, including derivatives, will be consistent

[62] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[63] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[64] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[65] 26 U.S.C. 851.

[66] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

with that Fund's investment objective and a Fund's use of derivatives may be used to enhance leverage. However, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[67]

Net Asset Value and Derivatives Valuation Methodology for Purposes of Determining Net Asset Value

The NAV of each Fund's Shares will be determined by dividing the total value of the Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding.

Each Fund's Shares will be valued as of the close of regular trading on the New York Stock Exchange (''NYSE'') normally 4:00 p.m. Eastern time (''E.T.'') (the ''NYSE Close'') on each day NYSE Arca is open (''Business Day''). Information that becomes known to each of the Funds or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services.

Fixed Income Instruments, including those to be purchased under firm commitment agreements/delayed delivery basis, will generally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services. Foreign fixed income securities will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Short-term debt instruments having a remaining maturity of 60 days or less are generally valued at amortized cost, which approximates market value.

As discussed in more detail below, derivatives will generally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Local closing prices will be used for all instrument valuation purposes. Foreign currency-denominated derivatives are generally valued using market inputs as of the respective local region's market close.

With respect to specific derivatives:

- Currency spot and forward rates from major market data vendors[68] will generally be determined as of the NYSE Close.
- Exchange traded futures will generally be valued at the settlement price of the exchange.
- A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.
- Equity total return swaps will generally be valued using the actual underlying equity at local market closing, while bank loan total return swaps are generally valued using the evaluated underlying bank loan price minus the strike price of the loan.
- Exchange traded non-equity options, index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.
- OTC and exchange traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services.
- OTC FX options will generally be valued by pricing vendors.
- All other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, CDX/CDS will generally be valued by pricing services.
- Forwards will generally be valued in the same manner as the underlying securities. Forward settling positions for which market quotes are readily available will generally be valued at market value. Typically, forwards on Fixed Income Instruments will be marked to market daily.

Exchange-traded equity securities will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, equity securities are generally valued at the mean of the last available bid and ask quotation on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Money market instruments, trade claims, privately placed and unregistered securities, structured products and other types of debt securities will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers.

If a foreign security's value has materially changed after the close of the security's primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Board. Foreign securities that do not trade when the NYSE is open are also valued at fair value.

Securities and other assets for which market quotes are not readily available are valued at fair value as determined in good faith by the Board or persons acting at their direction. The Board has adopted methods for valuing securities and other assets in circumstances where market quotes are not readily available, and has delegated to PIMCO the responsibility for applying the valuation methods. In the event that market quotes are not readily available, and the security or asset cannot be valued pursuant to one of the valuation methods, the value of the security or asset will be determined in good faith by the Valuation Committee of the Board, generally based upon recommendations provided by PIMCO.

Market quotes are considered not readily available in circumstances where there is an absence of current or reliable market-based data (*e.g.,* trade information, bid/ask information, broker quotes), including where events occur after the close of the relevant market, but prior to the NYSE Close, that materially affect the values of the Fund's securities or assets. In addition, market quotes are considered not readily available when, due to extraordinary circumstances, the exchanges or markets on which the securities trade do not open for trading for the entire day and no other market prices are available. The Board has delegated to PIMCO the responsibility for monitoring significant events that may materially affect the values of the Fund's securities or assets and for determining whether the value of the applicable securities or assets should be re-evaluated in light of such significant events.

When a Fund uses fair value pricing to determine its NAV, securities will not be priced on the basis of quotes from the

[67] Each Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following a Fund's first full calendar year of performance.

[68] Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

primary market in which they are traded, but rather may be priced by another method that the Board or persons acting at their direction believe reflects fair value. Fair value pricing may require subjective determinations about the value of a security. While the Trust's policy is intended to result in a calculation of a Fund's NAV that fairly reflects security values as of the time of pricing, the Trust cannot ensure that fair values determined by the Board or persons acting at their direction would accurately reflect the price that a Fund could obtain for a security if it were to dispose of that security as of the time of pricing (for instance, in a forced or distressed sale). The prices used by a Fund may differ from the value that would be realized if the securities were sold.

For a Fund's 4:00 p.m. E.T. futures holdings, estimated prices from Reuters will be used if any cumulative futures margin impact is greater than $0.005 to the NAV due to futures movement after the fixed income futures market closes (3:00 p.m. E.T.) and up to the NYSE Close (generally 4:00 p.m. E.T.). Swaps traded on exchanges such as the Chicago Mercantile Exchange (''CME'') or the Intercontinental Exchange (''ICE–US'') will use the applicable exchange closing price where available.

Investments initially valued in currencies other than the U.S. dollar are converted to the U.S. dollar using exchange rates obtained from pricing services. As a result, the NAV of a Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar. The value of securities traded in markets outside the United States or denominated in currencies other than the U.S. dollar may be affected significantly on a day that the NYSE is closed. As a result, to the extent that a Fund holds foreign (non-U.S.) securities, the NAV of a Fund's shares may change when an investor cannot purchase, redeem or exchange Shares.

Derivatives Valuation Methodology for Purposes of Determining Portfolio Indicative Value

On each Business Day, before commencement of trading in Fund Shares on NYSE Arca, each Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of shares of the Fund, the NYSE Arca or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association or other widely disseminated means an updated Portfolio Indicative Value (''PIV'') for each Fund as calculated by an information provider or market data vendor.

A third party market data provider will calculate the PIV for each Fund. For the purposes of determining the PIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps may be mapped to a swap curve and valued intraday based on the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- CDX/CDS may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.
- A third party market data provider's valuation of forwards will be similar to their valuation of the underlying securities, or another proxy as determined to be appropriate by the third party market data provider. The third party market data provider will generally use market quotes if available. Where market quotes are not available, they may fair value securities against proxies (such as swap or yield curves).

Each Fund's disclosure of forward positions will include information that market participants can use to value these positions intraday.

Disclosed Portfolio

Each Fund's disclosure of derivative positions in the applicable Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio.

Impact on Arbitrage Mechanism

For each Fund, the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will be substituted with a ''cash in lieu'' amount (as described below) when each Fund processes purchases or redemptions of creation units in-kind.

Creations and Redemptions of Shares

According to the Registration Statement, Shares of each of the Funds that trade in the secondary market will be ''created'' at NAV [69] by ''Authorized

[69] The NAV of each Fund's Shares generally will be calculated once daily Monday through Friday as of the close of trading on the New York Stock Exchange (''NYSE''), generally 4:00 p.m. E.T. (the

Continued

Participants'' only in block-size creation units (''Creation Units'') of 100,000 Shares or multiples thereof.[70] Each of the Funds will offer and issue Shares at their NAV per Share generally in exchange for a basket of debt securities held by that Fund (the ''Deposit Securities'') together with a deposit of a specified cash payment (the ''Cash Component''), or in lieu of Deposit Securities, a Fund may permit a ''cash-in-lieu'' amount for any reason at the Fund's sole discretion. Alternatively, a Fund may issue Creation Units in exchange for a specified all-cash payment (''Cash Deposit'') (together with Deposit Securities and Cash Component, the ''Fund Deposit''). Similarly, Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of debt securities held by the Funds and/or for a specified amount of cash (collectively, ''Redemption Instruments'').

On any given Business Day, purchases and redemptions of Creation Units will be made in whole or in part on a cash basis if an Authorized Participant deposits or receives (as applicable) cash in lieu of some or all of the Fund Deposit or Redemption Instruments, respectively, solely because such instruments are, in the case of the Fund Deposit, not available in sufficient quantity.[71] In determining whether a Fund will be selling or redeeming Creation Units on a cash or in-kind basis, the key consideration will be the benefit which would accrue to Fund investors. In many cases, investors may benefit by the use of all cash purchase orders because the Adviser would execute trades rather than market makers, and the Adviser may be able to obtain better execution in bond transactions due to its size, experience and potentially stronger relationships in the fixed income markets.

Except when aggregated in Creation Units, Shares will not be redeemable by the Funds. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the Authorized Participant agreement. PIMCO will make available on each Business Day via the National Securities Clearing Corporation (''NSCC''), prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m., E.T.), the identity and the required amount of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current ''Fund Deposit'' [72] (based on information at the end of the previous Business Day). Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of securities held by a Fund and/or for a specified amount of cash. Creations and redemptions must be made by an Authorized Participant.

Additional information regarding the Trust, the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to but not defined in this proposed rule change are defined in the Registration Statement.

Availability of Information

The Trust's Web site (*www.pimcoetfs.com*), which is publicly available prior to the public offering of Shares, will include a form of the prospectus for each of the Funds that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for each of the Funds, (1) daily trading volume, the prior Business Day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[73] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, each of the Funds will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the each of the Fund's calculation of NAV at the end of the Business Day.[74]

On a daily basis, the Funds will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for each of the Funds' Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of each of the Funds. The NAV of each of the Funds will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) on each Business Day. Authorized participants may refer to the basket composition file for information regarding Fixed Income Instruments, and any other instrument that may comprise a Fund's basket on a given day.

Investors can also obtain the Trust's SAI, the Funds' Shareholder Reports, and the Funds' Forms N–CSR and Forms N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Intra-day and closing price information regarding equity securities traded on a national

''NAV Calculation Time'') on any Business Day. NAV per Share is calculated by dividing the Fund's net assets by the number of that Fund's Shares outstanding. For more information regarding the valuation of Fund investments in calculating a Fund's NAV, see the Registration Statement.

[70] The term ''Authorized Participant'' refers to a Participating Party (a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''); or a Depository Trust Company (''DTC'') Participant who has executed a Participant Agreement (an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit aggregations).

[71] Such purchase or redemption transactions are ''custom orders.'' On any given Business Day, if the Fund accepts a custom order, the Adviser represents that the Fund will accept custom orders from all other Authorized Participants on the same basis.

[72] The Deposit Securities and Cash Component or, alternatively, the Cash Deposit, will constitute the Fund Deposit, which will represent the investment amount for a Creation Unit of each of the Funds.

[73] The Bid/Ask Price of each of the Funds will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of that Fund's NAV. The records relating to Bid/Ask Prices will be retained by each of the Funds and their service providers.

[74] Under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

securities exchange, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds exchange traded funds, and other equity-related securities, will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding Fixed Income Instruments also will be available from major market data vendors. In addition, price information for the debt securities and other financial instruments held by each of the Funds will be available through major market data vendors.[75] Price information relating to forwards, OTC options and swaps will be available from major market data vendors. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchanges on which such instruments are traded. U.S. exchange-traded options quotation and last sale information is available via the Options Price Reporting Authority. Price information regarding money market instruments, trade claims, privately placed and unregistered securities, bank loans and structured products will be available from major market data vendors. Price information regarding other investment company securities will be available from on-line information services and from the Web site for the applicable investment company security. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the PIV, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[76] The dissemination of the PIV, together with the Disclosed Portfolio, may allow investors to determine an approximate value of the underlying portfolio of each of the Funds on a daily basis and to provide an estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of any of the Funds.[77] Trading in Shares of any of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Funds' Reporting Authority will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each Fund's portfolio. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [78] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[79] The Exchange represents 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 applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, equities, futures and options on futures with other markets or other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares, exchange-trade options, equities, futures and options on futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, equities, futures and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[80] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income

[75] Supplementally, major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

[76] Currently, the Exchange understands that several major market data vendors display and/or make widely available PIV taken from the CTA or other data feeds.

[77] *See* NYSE Arca Equities Rule 7.12.

[78] 17 CFR 240.10A–3.

[79] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[80] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each of the Funds is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[81] that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, equities, futures and options on futures with other markets or other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares, exchange-trade options, equities, futures and options on futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, equities, futures and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

With respect to each Fund's absolute return investments, each Fund will limit its investment in securities and instruments economically tied to emerging market countries to 25% of its total assets. With respect to each Fund's absolute return investments, each Fund will limit its investment in ''high yield'' securities rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or if unrated, determined by PIMCO to be of comparable quality to 20% of its total assets (except that within such limitation, each Fund may invest in mortgage-related securities rated below B). With respect to each Fund's absolute return investments, each Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. Each Fund may invest up to 20% of its total assets in ''high yield securities'' rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B). Each Fund may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities. Each Fund may invest up to 20% of its total assets in bank loans. Each Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of that Fund's total assets. Each Fund's investment in illiquid securities will not exceed 15% of its net assets. None of the Funds will concentrate its investments in a particular industry.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information

[81] 15 U.S.C. 78f(b)(5).

is publicly available regarding each of the Funds and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each of the Funds will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for each Fund's calculation of NAV at the end of the Business Day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Trust's Web site will include a form of the prospectus for each of the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the any of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of either of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding each of the Funds' holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to each Fund's portfolio. In addition, the Funds' Reporting Authority will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each Fund's portfolio.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that, under normal circumstances, will invest principally in fixed income securities and that will enhance competition with respect to such products among market participants, to the benefit of investors and the marketplace.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–89 and should be submitted on or before September 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[82]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–20874 Filed 9–2–14; 8:45 am]

BILLING CODE 8011–01–P

[82] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The information collected is used by the FAA to register aircraft or hold an aircraft in trust. The information required to register and prove ownership of an aircraft is required by any person wishing to register an aircraft.

DATES: Written comments should be submitted by November 3, 2014.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0042.

Title: Aircraft Registration.

Form Numbers: FAA Forms 8050–1, 8050–2, 8050–4, 8050–98, 8050–117.

Type of Review: Renewal of an information collection.

Background: Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is used by the FAA to register an aircraft or hold an aircraft in trust. The information requested is required to register and prove ownership.

Respondents: Approximately 146,757 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 103,982 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 27, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–20992 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Part A of Subtitle VII of the Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. Information is collected to determine compliance with Federal regulations. Respondents are individual airmen, state or local governments, and businesses.

DATES: Written comments should be submitted by November 3, 2014.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The reporting and recordkeeping requirements of Federal Aviation Regulation (FAR) Part 91, General Operating and Flight Rules, are authorized by Part A of Subtitle VII of the Revised Title 49 United States Code. FAR Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of FAR Part 91 are necessary for FAA to assure compliance with these provisions.

Respondents: Approximately 21,197 airmen, state or local governments, and businesses.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 34 minutes.

Estimated Total Annual Burden: 235,164 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 27, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–20990 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection(s): Flight Engineers and Flight Navigators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our

intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information collected is used to determine certification eligibility of Flight Engineers and Flight Navigators.

DATES: Written comments should be submitted by November 3, 2014.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0007.

Title: Flight Engineers and Flight Navigators.

Form Numbers: FAA Form 8400–3.

Type of Review: Renewal of an information collection.

Background: FAA Form 8400–3, Application for an Airman Certificate and/or Rating (for flight engineer and flight navigator) and applications for approval of related training courses are submitted to FAA for evaluation. The information is reviewed to determine applicant eligibility and compliance with prescribed provisions of FAR Part 63, Certification: Flight Crewmembers Other Than Pilots.

Respondents: Approximately 1,004 flight engineers and flight navigators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 498 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 27, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–20991 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Aviation Awards Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection is used to nominate private citizens for recognition of their significant voluntary contribution to aviation education and flight safety.

DATES: Written comments should be submitted by November 3, 2014.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0574.

Title: General Aviation Awards Program.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The collection is used to nominate private citizens for recognition of their significant voluntary contribution to aviation education and flight safety. The agency/industry committee uses the information collected to select eight regional winners and one national winner from each group. The respondents are private citizens involved in aviation.

Respondents: Approximately 150 applicants.

Frequency: Information is collected annually.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 150 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 27, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–20994 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Space Transportation Licensing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information will determine if applicant proposals for conducting commercial space launches can be accomplished according to regulations issued by the Office of the Associate Administrator for Commercial Space Transportation.

DATES: Written comments should be submitted by November 3, 2014.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0608.

Title: Commercial Space Transportation Licensing Regulations.

Form Numbers: FAA Form 8800–1.

Type of Review: Renewal of an information collection.

Background: The Commercial Space Launch Act of 1984, 49 U.S.C. App.

2601–2623, as recodified at 49 U.S.C. Subtitle IX, Ch. 701—Commercial Space Launch Activities, 49 U.S.C. 70101–70119 (1994), requires certain data be provided in applying for a license to conduct commercial space launch activities. These data are required to demonstrate to the Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation (AST), that a license applicant's proposed activities meet applicable public safety, national security, and foreign policy interests of the United States.

Respondents: Approximately 4 space launch applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1544.5 hours.

Estimated Total Annual Burden: 6,178 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 27, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–20995 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Rotorcraft External Load Operator Certificate Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information required from the public by 14 CFR Part 133 is used by the FAA to process the operating certificate as a record of aircraft authorized for use, and to monitor Rotorcraft External-Load Operations.

DATES: Written comments should be submitted by November 3, 2014.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0044.

Title: Rotorcraft External Load Operator Certificate Application.

Form Numbers: FAA Form 8710–4.

Type of Review: Renewal of an information collection.

Background: The information required by 14 CFR part 133 is used by the FAA to process the operating certificate as a record of aircraft authorized for use, and to monitor Rotorcraft External-Load Operations. FAA Form 8710–4, Rotorcraft External-Load Operator Certificate Application, provides a record of surveillance activities when completed by an inspector. If the information was not collected, FAA would not be able to meet its regulatory responsibilities under Part 133.

Respondents: Approximately 4,000 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2.26 hours.

Estimated Total Annual Burden: 3,268 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 27, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–20993 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Malfunction or Defect Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The information collected allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

DATES: Written comments should be submitted by November 3, 2014.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0003.

Title: Malfunction or Defect Report.

Form Numbers: FAA Form 8010–4.

Type of Review: Renewal of an information collection.

Background: Repair stations certificated under Part 145 and air taxi operators certificated under Part 135 mandatorily submit malfunction or defect reports on Federal Aviation Administration (FAA) Form 8010–4. When defects are reported which are likely to exist on other products of the same or similar design, the FAA may disseminate safety information to a particular section of the aviation community. The FAA also may adopt new regulations or issue Airworthiness

Directives (AD's) to address a specific problem.

Respondents: Approximately 60,000 operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 9 minutes.

Estimated Total Annual Burden: 9,000 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on August 27, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–20989 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2014–0034]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 3, 2014.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2014–0034 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Sinnette, Office of Innovative Program Delivery, 202–366–1561, *james.sinnette@dot.gov,* Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: FHWA Major Project Financial Plans and Project Management Plans.

Background: Major projects are defined in section 106(h) of title 23, United States Code (U.S.C.), as projects receiving Federal financial assistance with an estimated total cost of $500,000,000, or other projects as may be identified by the Secretary. Major projects are typically large, complex projects designed to address major highway needs and require the investment of significant financial resources. Project sponsors of major projects are required to submit a project management plan and an annual financial plan to FHWA.

The preparation of the project management plan, as required by 23 U.S.C. 106(h)(2), ensures that clearly defined roles, responsibilities, procedures and processes are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, quality of, and the Federal requirements applicable to, the project. The project management plan serves as a guide for implementing the major project and documents assumptions and decisions regarding communication, management processes, execution and overall project control.

The preparation of the annual financial plan, as required by 23 U.S.C. 106(h)(3), ensures that the necessary financial resources are identified, available, and monitored throughout the life of the project. An annual financial plan is a comprehensive document that reflects the project's scope, schedule, cost estimate, and funding structure to provide reasonable assurance that there will be sufficient funding available to implement and complete the entire project, or a fundable phase of the project, as planned.

Respondents: Approximately 100 project sponsors per year.

Frequency: The financial plan is submitted annually. The first financial plan is submitted prior to the authorization of Federal funds for construction and updates are submitted each year until construction completion.

The project management plan is first submitted prior to the start of construction and then updated as significant changes to the project occur during construction.

Estimated Average Burden per Response: Approximately 40 hours for the initial submittal of each plan and 20 hours for each update.

Estimated Total Annual Burden Hours: Approximately 20 initial plans and 80 plan updates are submitted each year. For a total of approximately, 2,400 hours each year.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on August 28, 2014.

Michael Howell,

Information Collection Officer.

[FR Doc. 2014–20909 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in West Virginia and Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitations on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, US 220 NHS Corridor between Interstate 68 (I–68) and Corridor H in Allegany County, Maryland and Grant, Hardy, Hampshire and Mineral Counties, West Virginia. The Federal actions, taken as a result of a tiered environmental review process under the National Environmental Policy Act, 42 U.S.C. 4321–4351 (NEPA), and implementing regulations on tiering, 40 CFR 1502.20, 40 CFR 1508.28, and 23 CFR Part 771, determined certain issues relating to the proposed projects. Those Tier 1 decisions will be used by Federal agencies in subsequent proceedings, including decisions whether to grant licenses, permits, and approvals for highway and transit projects. Tier 1 decisions also may be relied upon by State and local agencies in proceedings on the proposed projects.

DATES: By this notice, the FHWA is advising the public that it has made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of the Tier 1 Federal agency decisions on the proposed highway will be barred unless the claim is filed on or before February 2, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jason Workman, Director, Office of Program Development, Federal Highway Administration, 700 Washington Street E., Charleston, WV 25301; telephone: (304) 347–5928; email: *jason.workman@dot.gov* or Ben Hark, Environmental Section Head, Engineering Division, West Virginia Department of Transportation, Division of Highways (WVDOH), State Capitol Complex, Building 5, 1900 Kanawha Boulevard, East, Charleston, WV 26305; telephone: (304) 558–2885; email: *ben.l.hark@wv.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has approved a Tier 1 Final Environmental Impact Statement (FEIS) and issued a Record of Decision (ROD) in connection with a proposed highway project in Maryland and West Virginia: US 220 NHS Corridor between I–68 and Corridor H in Allegany County, Maryland and Grant, Hardy, Hampshire and Mineral Counties, West Virginia. The project will provide a four-lane, partially controlled highway that begins south of I–68 near LaVale, Maryland and extends southwest to connect with Corridor H near Scherr, West Virginia. It would connect the communities of LaVale, Cresaptown and McCoole in Maryland and Keyser and New Creek in West Virginia. The proposed highway will be on both new and existing alignment.

Decisions in the FHWA Tier 1 ROD that have final approval include, but are not limited to, the following:

a. Project Purpose and Need—Discussed in FEIS Chapter 1.0, Sections 1.3 and 1.4.

b. Range of Alternatives for Analysis—Discussed in FEIS Chapter 2.0, Section 2.2.

c. Selection of the Preferred Corridor to be Carried Forward into Tier 2—Corridor B with the possibility of using the northern spur of Corridor D that connects I–68 in Maryland has been identified as the Preferred Corridor that will be carried forward into Tier 2. The northern spur of Corridor D begins on US 220 just south of Maryland State Route 53 (MD 53) and terminates at I–68. Both these termini will be carried forward into Tier 2 to determine which would best meet the project's purpose and need, be the least environmentally damaging and operate most efficiently. Advancing the northern spur of Corridor D in Maryland as part of the Preferred Corridor's possible connection to I–68 will allow flexibility in developing a new I–68 Interchange while providing additional opportunities for avoiding socioeconomic, natural and cultural resources and minimizing the potential impacts of future alignments (see FEIS Chapter 2.0, Section 2.11; FEIS Chapter 6.0, Section 6.1; and ROD Sections 1.0, 1.3, and 2.7).

d. Alternatives Eliminated from Further Study—The alternatives that will not be considered any further include, but are not limited to, those identified in the Tier 1 FEIS as Corridors A, C, D, E and the Crossover Corridors which combined portions of Corridors B, C and D (see FEIS Chapter 2.0, Sections 2.9 and 2.10; and ROD Section 2.0).

e. The project may result in a program of individual transportation improvement projects throughout the US 220 Preferred Corridor, with several projects having independent utility and serving different logical termini. However, the design criteria to be carried forward into Tier 2 will be based on a four-lane, partially controlled highway. The WVDOH and Maryland State Highway Administration (MDSHA) will independently advance Tier 2 NEPA within their respective states. In West Virginia, a typical section will require a minimum width of 136 feet and, in Maryland, the typical section will require a minimum width of 140.5 feet. The highway width may increase to approximately 300 feet to accommodate construction of the four-lane facility in mountainous terrain (see ROD Section 1.3).

Interested parties may consult the ROD and FEIS for further information on each of the decisions described above.

The Tier 1 actions by the Federal agencies, and the laws under which such actions were taken, are described in the FEIS approved April 2, 2014, the ROD approved July 21, 2014, and in other documents in the FHWA project records. The scope and purpose of the Tier 1 FEIS are described in Chapter 1.0 of the FEIS. The FEIS, ROD, and other documents in the FHWA project file are available by contacting the FHWA or the WVDOH at the addresses provided above. The FEIS and ROD also are available online at *http://www.transportation.wv.gov/highways/engineering/comment/us220/Pages/default.aspx.* OR *http://apps.roads.maryland.gov/WebProjectLifeCycle/ProjectInformation.aspx?projectno=AL613111#.*

This notice applies to all Federal agency Tier 1 decisions that are final within the meaning of 23 U.S.C. 139(l)(1) as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351].

2. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

3. Endangered Species Act [16 U.S.C. 1531–1544].

4. National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq].

5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].

6. Clean Air Act [42 U.S.C. 7401–7671(q)].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, § 1308, 126 Stat. 405 (2012).

Issued on August 27, 2014.

Thomas J. Smith,

Division Administrator, Federal Highway Administration, Charleston, West Virginia.

[FR Doc. 2014–20919 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2014–0011–N–16]

Proposed Agency Information Collection Activities; Comment Request

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting the information collection requests (ICRs) below for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than November 3, 2014.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–_____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Roadway Worker Protection.

OMB Control Number: 2130–0539.

Abstract: This rule establishes regulations governing the protection of railroad employees working on or near railroad tracks. The regulation requires that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program include an on-track safety manual; a clear delineation of employers' responsibilities, as well as employees' rights and responsibilities thereto; well-defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad is subject to review and approval by FRA. Part 214 regulations have been deemed different enough from the part 213 regulations as to require a separate and distinct reporting form (new Form FRA F 6180.119). Regardless of discipline, the FRA inspector will complete the new Roadway Workplace Safety Violation Report Form (FRA F 6180.119) when recommending civil penalties for part 214 infractions.

Form Number(s): FRA F 6180.119.

Affected Public: Businesses/Individuals.

Respondent Universe: 718 Railroads; 50,000 Roadway Workers.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Form FRA F 6180.119—Part 214 Railroad Workplace Safety Violation Report.	350 Safety Inspectors ..	150 forms	4 hours	600
214.303—Railroad On-Track Safety Programs: —Amendments to Programs	60 Railroads	20 amend. + 584 amend	20 hours; 4 hrs	2,736

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Subsequent Years: New Programs	5 New Railroads	5 new prog.	250 hours	1,250
214.313—Good Faith Challenges to On-Track Safety Rules.	20 Railroads	80 challenges	4 hours per challenge	320
214.315/335—Supervision +communication:				
—Regular Job Briefings	50,000 Rdwy Workers	16,350,000 brf	2 minutes	545,000
—Adjacent-Track Safety Briefings (New)	24,500 Rdwy Workers	2,403,450 brf.	30 seconds	20,029
214.321—Exclusive Track Occupancy: Working Limits:				
—Written authority to roadway worker in charge.	8,583 Roadway Workers.	700,739 authorities	1 minute	11,679
214.325—Train Coordination—Establishing Working Limits through Communication.	50,00 Roadway Workers.	36,500 comm.	15 seconds	152
214.327—Inaccessible Track:				
—Working Limits on Non-controlled Track: Notifications.	718 Railroads	50,000 notifications	10 minutes	8,333
214.336—*Procedures for Adjacent-Track Movements Over 25 mph:*				
—Notifications/Watchmen/Lookout Warnings	100 Railroads	10,000 notific.	15 seconds	42
—Roadway Worker Communication with Train Engineers or Equipment Operators.	100 Railroads	3,000 comm.	1 minute	50
—*Procedures for Adjacent-Track Movements 25 mph or less*.	100 Railroads	3,000 notific.	15 seconds	13
—Notifications/Watchmen/Lookout Warnings.				
—Roadway Worker Communication with Train Engineers or Equipment Operators.	100 Railroads	1,500 comm	1 minute	25
—Exceptions to the requirements in paragraphs (a), (b), and (c) for adjacent-controlled-track on-track safety: Work activities involving certain equipment and purposes—On-Track Job Safety Briefings.	100 Railroads	1,030,050 briefings	15 seconds	4,292
214.337—On-Track Safety Procedures for Lone Workers: Statements by Lone Workers.	718 Railroads	2,080,000 statements	30 seconds	17,333
214.343/345/347/349/351/353/355—training	50,000 Rdwy Workers	50,000 tr. RW	4.5 hours	225,000
—Additional on-track safety training (New)	35,000 Rdwy Workers	35,000 tr. RW	5 min.	2,917
—Records of Training	50,000 Roadway Workers.	50,000 records	2 min.	1,667
214.503—Good Faith Challenges; Procedures for Notification and Resolution:				
—Notifications for Non-Compliant Roadway Maintenance Machines or Unsafe Condition.	50,000 Rdwy Workers	125 notific.	10 minutes	21
—Resolution Procedures	644 Railroads	10 procedures	2 hours	20
214.505—Required Environmental Control and Protection Systems for New On-Track Roadway Maintenance Machines with Enclosed Cabs:	644 Railroads/200 contractors.	500 lists	1 hour	500
—Designations/Additions to List	644 Railroads/200 contractors.	150 additions/designations.	5 minutes	13
214.507—A-Built Light Weight on New Roadway Maintenance Machines.	644 Railroads	1,000 stickers	5 minutes	83
214.511—Required Audible Warning Devices for New On-Track Roadway Maintenance Machines.	644 Railroads	3,700 identified mechanisms.	5 minutes	308
214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines:.				
—Identification of Triggering Mechanism—Horns.	703 Railroads	200 mechanisms	5 minutes	17
214.515—Overhead Covers for Existing On-Track Roadway Maintenance Machines.	644 Railroads	500 requests + 500 responses.	10 minutes; 20 minutes	250
214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After Jan. 1, 1991.	644 Railroads	500 stencils	5 minutes	42
214.518—Safe and Secure Position for riders:.				
—Positions identified by stencilings/markings/notices.	644 Railroads	1,000 stencils	5 minutes	83
214.523—Hi-Rail Vehicles—Inspections/Records:	644 Railroads	2,000 records	60 minutes	2,000
—Non-Complying Conditions	644 Railroads	500 tags + 500 reports	10 min.; 15 min	208
214.527—On-Track Roadway Maintenance Machine; Inspection for Compliance and Repair Schedules.	644 Railroads	550 tags + 550 reports	5 min.; 15 min	184

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
214.533—Schedule of Repairs Subject to Availability of Parts—Records of Compliance with this Section.	644 Railroads	250 records	15 minutes	63

Total Estimated Responses: 22,816,613.

Total Estimated Annual Burden: 845,230 hours.

Status: Extension of a Currently Approved Collection.

Title: Conductor Certification.

OMB Control Number: 2130–0596.

Abstract: On November 9, 2011, FRA issued regulations for certification of conductors, as required by the Rail Safety Improvement Act of 2008. *See* 76 FR 69802. This rule requires railroads to have a formal program for certifying conductors. As part of that program, railroads are required to have a formal process for training prospective conductors and determining that all persons are competent before permitting them to serve as a conductor. FRA issued this regulation to ensure that only those persons who meet minimum Federal safety standards serve as conductors, to reduce the rate and number of accidents and incidents, and to improve railroad safety. Although this rule does not propose any specific amendments to the regulation governing locomotive engineer certification, it does highlight areas in that regulation that may require conforming changes. The information collected under this rule is used by FRA to ensure that railroads and their employees fully comply with all the requirements of part 242, including a conductor certification/recertification program, fitness requirements, initial and periodic testing of conductors, territorial qualifications, etc.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 677 railroads.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR Section/Subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
242.9—Waivers—Petitions	677 railroads	10 petitions	3 hours	30
242.101/103—Certification Program: Written Program for Certifying Conductors.	677 railroads	678 programs	160 hrs./581 Hrs./15.5 hrs..	16,799
Approval of Design of Programs:				
—Certification Programs for New RRs	6 railroads	6 new prog.	15.5 hours	93
—Conductor Certification Submission Copies to Rail Labor Organizations.	677 railroads	200 copies	15 minutes	50
—Affirmative Statements that Copies of Submissions Sent to RLOs.	677 railroads	200 statements	15 minutes	50
—Certified Comments on Submissions	677 railroads	35 comments	4 hours	140
—Certification Programs Disapproved by FRA and then Revised.	677 railroads	10 programs	4 hours	40
—Revised Certification Programs Still Not Conforming and Then Resubmitted.	677 railroads	3 programs	2 hours	6
—Certification Programs Materially Modified After Initial FRA Approval.	677 railroads	50 programs	2 hours	100
—Materially Modified Programs Disapproved by FRA & Then Revised.	677 railroads	3 programs	2 hours	6 hours
—Revised Programs Disapproved and Then Resubmitted.	677 railroads	1 program	2 hours	2 hours
242.105 —Implementation Schedule:				
—Designation of Certified Conductors (Class I Railroads).	677 railroads	48,600 designations	5 minutes	4,050
—Issued Certificates (1/3 each year)	677 railroads	16,200 certif.	1 hour	16,200
—Designation of Certified Conductors (Class II and III Railroads).	677 railroads	5,400 design.	5 minutes	450
—Issued Certificates (1/3 each year)	677 railroads	1,800 certif.	1 hour	1,800
—Requests for Delayed Certification	677 railroads	5,000 request	30 minutes	2,500
—Testing/Evaluation to Certify Persons	677 railroads	1,000 tests	560 hours	560,000
—Testing/Evaluation to Certify Conductors (Class III).	627 railroads	100 tests	400 hours	40,000
242.107—Types of Service—Reclassification to Diff. Type of Cert.	677 railroads	25 conductor Tests/Evaluations.	8 hours	200
242.109—Opportunity by RRs for Certification Candidates to Review and Comment on Prior Safety Record	677 Railroads	200 records + 200 comments.	30 minutes + 10 minutes.	133
242.111—Prior Safety Conduct As Motor Vehicle Operator:				
—Eligibility Determinations	677 Railroads	1,100 dtrmin.	10 minutes	183
—Initial Certification for 60 Days	677 Railroads	75 certific.	10 minutes	13
—Recertification for 60 Days	677 Railroads	125 recertif.	10 minutes	21
—Driver Info. Not Provided and Request for Waiver by Persons/RR.	677 Railroads	25 requests	2 hours	50

CFR Section/Subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Request to Obtain Driver's License Information From Licensing Agency.	54,000 Conductors/Persons.	18,000 req.	15 minutes	4,500
—Requests for Additional Information From Licensing Agency.	54,000 Conductors/Persons.	25 requests	10 minutes	4
—Notification to RR by Persons of Never Having a License.	54,000 Conductors/Persons.	2 notifications	10 minutes	.33
—Report of Motor Vehicle Incidents	54,000 Conductors	200 reports	10 minutes	33
—Evaluation of Driving Record	54,000 Conductors	18,000 eval.	15 minutes	4,500
—DAC Referral by RR After Report of Driving Drug/Alcohol Incident.	677 Railroads	180 referrals	5 minutes	15
—DAC Request and Supply by Persons of Prior Counseling or Treatment.	677 Railroads	5 requests/Records	30 minutes	3
—Conditional Certifications Recommended by DAC.	677 Railroads	50 certificat.	4 hours	200
242.113—Prior Safety Conduct As Employee of a Different Railroad.	54,000 conductors	360 requests/ 360 records	15 minutes + 30 minutes	270
242.115—Substance Abuse Disorders and Alcohol Drug Rules Compliance:				
—Meeting Section's Eligibility Reqmnt	54,000 conductors	18,000 determinations	2 minutes	600
—Written Documents from DAC Person Not Affected by a Disorder.	677 railroads	400 docs.	30 minutes	200
—Self-Referral by Conductors for Substance Abuse Counseling.	54,000 conductors	10 self-referrals	10 minutes	2
—Certification Reviews for Occurrence/Documentation of Prior Alcohol/Drug Conduct by Persons/Conductors.	677 railroads	18,000 reviews	10 minutes	3,000
—Written Determination That Most Recent Incident Has Occurred.	677 railroads	150 determin.	60 minutes	150
—Notification to Person That Recertification Has Been Denied.	677 railroads	150 notific.	10 minutes	25
—Persons/Conductors Waiving Investigation	54,000 conductors	100 waivers	10 minutes	17
242.117—Vision and Hearing Acuity:				
—Determination Vision Standards Met	677 railroads	18,000 deter.	20 minutes	6,000
—Determination Hearing Stds. Met	677 railroads	18,000 deter.	20 minutes	6,000
—Additional Gap Hearing Tests	677 railroads	200 deter.	20 minutes	67
—Medical Examiner Certificate That Person Has Been Examined/Passed Test.	677 railroads	18,000 certif.	2 hours	36,000
—Document Standards Met with Conditions	677 railroads	50 document	30 minutes	25
—Document Standards Not Met	677 railroads	25 document	30 minutes	13
—Notation Person Needs Corrective Device (Glasses/Hearing Aid).	677 railroads	10,000 notes	10 minutes	1,667
—Request for Further Medical Evaluation for New Determination.	677 railroads	100 requests + 100 Evals..	60 minutes + 2 hours	300
—Request for Second Retest and Another Medical Evaluation.	677 railroads	25 requests + 25 Evals.	60 minutes + 2 hours	75
—Copies of Part 242 Provided to RR Medical Examiners.	677 railroads	677 copies	60 minutes	677
—Consultations by Medical Examiners with Railroad Officer and Issue of Conditional Certification.	677 railroads	100 consults + 100 certif.	2 hours + 10 minutes	217
—Notification by Certified Conductor of Deterioration of Vision/Hearing.	677 railroads	10 notific.	10 minutes	2
242.119—Training:				
—Completion of Training Program	677 railroads	678 Programs	36 hours/70 hrs/3 hrs	3,751
—Modification to Training Program	677 railroads	678 Programs	12 hrs/20 hrs/30 min.	934
—Completion of Training Program by Conductors/Persons + Documents.	54,000 Conductors	18,000 Docs/18,000 Cond..	1 hour/560 hours	10,098,000
—Modification of Training Program Due to New Laws/Regulations.	677 railroads	30 programs	4 hours	120
—Consultation with Supervisory Employee During Written Test.	677 railroads	1,000 consult	15 minutes	250
—Familiarization Training Upon Transfer of RR Ownership.	677 railroads	10 trained Conductors	8 hours	80
—Continuing Education of Conductors	677 railroads	18,000 cont. trained cond..	8 hours	144,000
242.121—Knowledge Testing:				
—Determining Eligibility	677 railroads	18,000 deter.	30 minutes	9,000
—Retests/Re-Examinations	677 railroads	500 Retests	8 hours	4,000
242.123—Monitoring Operational Performance:				
—Unannounced Compliance Tests and Records.	677 railroads	18,000 tests + 18,000 recd.	10 minutes + 5 minutes	4,500

CFR Section/Subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Return to Service That Requires Unannounced Compliance Test/Record.	677 railroads	1,000 tests + 1,000 records.	10 minutes + 5 minutes	250
242.125/127—Certificate Determination by Other Railroads/Other Country:				
—Determination Made by RR Relying on Another RR's Certification.	677 railroads	100 determin.	30 minutes	50
—Determination by Another Country	677 railroads	200 determin.	30 minutes	100
242.203—Retaining Information Supporting Determination—Records.	677 railroads	18,000 recds	15 minutes	4,500
—Amended Electronic Records	677 railroads	20 records	60 minutes	20
242.205—List of Certified Conductors Working in Joint Territory.	677 railroads	625 lists	60 minutes	625
242.209—Maintenance of Certificates:				
—Request to Display Certificate	677 railroads	2,000 request/displays	2 minutes	67
—Notification That Request to Serve Exceeds Certification.	677 railroads	1,000 notif.	10 minutes	167
242.211—Replacement of Certificates	677 railroads	500 certific.	5 minutes	42
242.213—Multiple Certificates:				
—Notification to Engineer That No Conductor Is On Train.	677 railroads	5 notification	10 minutes	1
—Notification of Denial of Certification by Individuals Holding Multiple Certifications.	677 railroads	10 notific.	10 minutes	2
242.215—RR Oversight Responsibility:				
—RR Review and Analysis of Administration of Certification Program.	677 railroads	44 reviews/Analyses	40 hours	1,760
—Report of Findings by RR to FRA	677 railroads	36 reports	4 hours	144
242.301—Determinations—Territorial Qualification and Joint Operations.	320 railroads	1,080 Deter.	15 minutes	270
—Notification by Persons Who Do Not Meet Territorial Qualification.	320 railroads	500 Notific.	10 minutes	83
242.401—Notification to Candidate of Information That Forms Basis for Denying Certification and Candidate Response.	677 railroads	40 notific. + 40 responses.	60 minutes/60 minutes	80
—Written Notification of Denial of Certification.	677 railroads	40 notific.	60 minutes	40
242.403/405—Criteria for Revoking Certification; Periods of Ineligibility:				
—Review of Compliance Conduct	677 railroads	950 reviews	10 minutes	158
—Written Determination That the Most Recent Incident Has Occurred.	677 railroads	950 determin.	60 minutes	950
242.407—Process for Revoking Certification:				
—Revocation for Violations of Section 242.115(e).	677 railroads	950 Revoked Certificates	8 hours	7,600
—Immediate Suspension of Certificate	677 railroads	950 suspend Certificates	1 hour	950
—Determinations Based on RR Hearing Record.	677 railroads	950 determin.	15 minutes	238
—Hearing Record	677 railroads	950 records	30 minutes	475
—Written Decisions by RR Official	677 railroads	950 decisions	2 hours	1,900
—Service of Written Decision on Employee by RR + RR Service Proof.	677 railroads	950 decisions + 950 proofs.	10 minutes + 5 minutes	238
—Written Waiver of Right to Hearing	54,000 Conductors	425 waivers	10 minutes	71
—Revocation of Certification Based on Information That Another Railroad Has Done So.	677 railroads	15 revoked Certifications	10 minutes	3
—Placing Relevant Information in Record Prior to Suspending Certification/Convening Hearing.	677 railroads	100 updated records	1 hour	100

Total Estimated Responses: 354,076.

Total Estimated Total Annual Burden: 3,972,997 hours.

Status: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 28, 2014.

Rebecca Pennington,

Chief Financial Officer.

[FR Doc. 2014–20911 Filed 9–2–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Capability for Young Americans

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Capability for

Young Americans (Council) will convene for an open meeting on October 2, 2014, at the Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC, beginning at 9:00 a.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on October 2, 2014 at 9:00 a.m. Eastern Time.

Submission of Written Statements: The public is invited to submit written statements to the Council. Written statements should be sent by any one of the following methods:

Electronic Statements

Email: *pacfcya@treasury.gov;* or

Paper Statements

Send paper statements to the Department of the Treasury, Office of Consumer Policy, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220; Attention: Luisa Quittman.

In general, the Department will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for public inspection and photocopying in the Department's library located at Treasury Department Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The library is open on official business days between the hours of 10:00 a.m. and 5:00 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Louisa Quittman, Director, Financial Education, Office of Consumer Policy, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–5770 or *pacfcya@treasury.gov.*

SUPPLEMENTARY INFORMATION: On June 25, 2013, the President signed Executive Order 13646, creating the Council to help build the financial capability of young people from an early age, in schools, communities, and the workplace. Understanding financial matters and making informed financial decisions help contribute to financial stability. The Council is composed of two *ex officio* Federal officials and 22 non-governmental members appointed by the President with relevant backgrounds, such as financial services, and education. The Director of the Consumer Financial Protection Bureau has also been invited to participate as a member of the Council. The role of the Council is to advise the President and the Secretary of the Treasury on means to promote and enhance the financial capability of young Americans. In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Louisa Quittman, Designated Federal Officer of the Council, has ordered publication of this notice that the Council will convene its second meeting on October 2, 2014, at the Department of Treasury, 1500 Pennsylvania Avenue NW., Washington, DC, beginning at 9:00 a.m. Eastern Time. The meeting will be open to the public. Members of the public who plan to attend the meeting must register in advance. To register, please go to *www.treasury.gov,* click on Resource Center, then Office of Consumer Policy, and then on the President's Advisory Council on Financial Capability for Young Americans by 5:00 p.m. Eastern Time on September 23, 2014. To register, attendees will need to provide a full name, date of birth, and Social Security Number. For entry into the building on the date of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo. The Council will: (1) Identify ways to build the financial knowledge, skills and opportunities for young people, (2) discuss reports from each of the Council's four subcommittees and (3) discuss future ideas for the Council.

Dated: August 26, 2014.

David G. Clunie,

Executive Secretary, Department of the Treasury.

[FR Doc. 2014–20913 Filed 9–2–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property has been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the one individual identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on August 27, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On August 27, 2014, the Director of OFAC designated the following individual whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

1. QUINTERO NAVIDAD, Sajid Emilio (a.k.a. QUINTERO NAVIDAD, Sagid; a.k.a. ''EL CADETE''); DOB 22 Nov 1980; POB Zapopan, Jalisco, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. QUNS801122HJCNVJ00 (Mexico) (individual) [SDNTK].

Dated: August 27, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–20910 Filed 9–2–14; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2014 United States Mint Discovery Set

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing a price of $24.95 for the 2014 United States Mint Discovery Set.

FOR FURTHER INFORMATION CONTACT: Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: August 27, 2014.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2014–20908 Filed 9–2–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0405]

Agency Information Collection (REPS Annual Eligibility Report) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0405'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0405.''

SUPPLEMENTARY INFORMATION:

Title: REPS Annual Eligibility Report, (Under the Provisions of Section 156, Public Law 97–377), VA Form 21–8941.

OMB Control Number: 2900–0405.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–8941 is completed annually by claimants who have earned income that is at or near the limit of earned income. The Restored Entitlement Program for Survivors (REPS) program pays benefits to certain surviving spouses and children of Veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the information collected to determine a claimant's continued entitlement to REPS benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 20, 2014, at page 33805.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,200.

Dated: August 28, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–20923 Filed 9–2–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Agency Information Collection (Student Beneficiary Report—REPS (Restored Entitlement Program for Survivors): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0399'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0399.''

SUPPLEMENTARY INFORMATION:

Title: Student Beneficiary Report—REPS (Restored Entitlement Program For Survivors), VA Forms 21–8938 and 21–8938–1.

OMB Control Number: 2900–0399.

Type of Review: Revision of a currently approved collection.

Abstract: Students between the ages of 18–22 who are receiving Restored Entitlement Program for Survivors (REPS) benefits based on schoolchild

status complete VA Forms 21–8938 and 21–8938–1 to certify that he or she is enroll full-time in an approved school. REPS benefit is paid to children of Veterans who died in service or who died as a result of service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the data collected to determine the student's eligibility for continued REPS benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 12, 2014, at page 33807.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

Dated: August 28, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–20922 Filed 9–2–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0545]

Agency Information Collection (Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0545'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0545.''

SUPPLEMENTARY INFORMATION:

Title: Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death, VA Form 21P–8416b.

OMB Control Number: 2900–0545.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants complete VA Form 21P–8416b to report compensation awarded by another entity or government agency for personal injury or death. Such award is consider as countable income; however, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the compensation may be deducted from the amount awarded or settled. The information collected is use to determine the claimant's eligibility for income based benefits and the rate payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 12, 2014, at pages 33815–33816.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,500.

Dated: August 28, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–20924 Filed 9–2–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Agency Information Collection (Report of Treatment in Hospital) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0119'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0119.''

SUPPLEMENTARY INFORMATION:

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form Letter 29–551 is used collect information from hospitals where a claimant was treated. VA uses the data to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 12, 2014, at page 33807

Affected Public: Individuals or households.

Estimated Annual Burden: 4,055 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,277.

Dated: August 28, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–20921 Filed 9–2–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Wednesday,
No. 170 September 3, 2014

Part II

Environmental Protection Agency

40 CFR Part 52
Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0588; FRL–9912–97–OAR]

Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze and Interstate Visibility Transport Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action promulgates a Federal Implementation Plan (FIP) addressing the requirements of the Regional Haze Rule (RHR) and interstate visibility transport for the disapproved portions of Arizona's Regional Haze (RH) State Implementation Plan (SIP) as described in a final rule published in the **Federal Register** on July 30, 2013. In that action, we partially approved and partially disapproved the State's plan to implement the regional haze program for the first planning period. This final action includes our responses to comments on our proposed FIP published in the **Federal Register** on February 18, 2014. This final rule, together with a final rule published in the **Federal Register** on December 5, 2012, completes our FIP for the disapproved portions of Arizona's RH SIP. This final rule addresses the RHR's requirements for Best Available Retrofit Technology (BART), Reasonable Progress (RP), and a Long-term Strategy (LTS) as well as the interstate visibility transport requirements of the Clean Air Act (CAA) for pollutants that affect visibility in Arizona's 12 Class I areas and areas in nearby states. The BART sources addressed in this final FIP are Tucson Electric Power (TEP) Sundt Generating Station Unit 4, Lhoist North America (LNA) Nelson Lime Plant Kilns 1 and 2, ASARCO Incorporated Hayden Smelter, and Freeport-McMoRan Incorporated (FMMI) Miami Smelter. The reasonable progress sources addressed in the FIP are Phoenix Cement Company (PCC) Clarkdale Plant Kiln 4 and CalPortland Cement (CPC) Rillito Plant Kiln 4. EPA is prepared to work with the State on a SIP revision that would replace some or all elements of the FIP.

DATES: *Effective Date:* This rule is effective October 3, 2014.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0588 for this action. Generally, documents in the docket are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. Please note that while many of the documents in the docket are listed at *http://www.regulations.gov,* some information may not be specifically listed in the index to the docket and may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports, or otherwise voluminous materials), and some may not be available at either locations (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb may be reached at telephone number (415) 947–4139 and via electronic mail at *r9azreghaze@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. History of State and Federal Plans
  A. State Submittals and EPA Actions
  B. EPA's Authority To Promulgate a FIP
III. Summary of Proposed Rule
  A. Regional Haze
  B. Interstate Transport of Pollutants That Affect Visibility
IV. Overview of Final Action
  A. BART Determinations
  B. Reasonable Progress Determinations
  C. Reasonable Progress Goals and Demonstration
  D. Long-Term Strategy
  E. Interstate Visibility Transport
  F. Other Changes From Proposal
V. Responses to General Comments
  A. Introduction
  B. Comments on State and EPA Actions on Regional Haze
  C. Comments on State and Federal Roles in the Regional Haze Program
VI. Responses to Comments on EPA's Proposed BART Determinations
  A. Comments on Sundt Generating Station Unit 4
  B. Comments on Nelson Lime Plant Kilns 1 and 2
  C. Comments on the Hayden Smelter
  D. Comments on the Miami Smelter
VII. Responses to Comments on EPA's Proposed Reasonable Progress Determinations
  A. Comments on Phoenix Cement Clarkdale Plant
  B. Comments on CalPortland Cement Rillito Plant
  C. Comments on Other Reasonable Progress NO_X Point Sources
  D. Comments on Area Sources of NO_X and SO_2
  E. Comments on Reasonable Progress Goals and Uniform Rate of Progress
  F. Other Comments on Reasonable Progress
VIII. Responses to Comments on Statutory and Executive Order Reviews
IX. Responses to Other Comments
  A. Comments on Preamble Language
  B. Comments on Rule Language
  C. Comments on Other Benefits of the Regional Haze Program
  D. Miscellaneous Comments
X. Summary of Final Action
  A. Regional Haze
  B. Interstate Transport
XI. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act
  L. Petitions for Judicial Review

Definitions

(1) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(2) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(3) The words *Arizona* and *State* mean the State of Arizona.

(4) The initials *BACT* mean or refer to Best Available Control Technology.

(5) The initials *BART* mean or refer to Best Available Retrofit Technology.

(6) The initials *BOD* mean or refer to boiler operating day.

(7) The initials *CAMD* mean or refer to Clean Air Markets Division at EPA.

(8) The initials *CBI* mean or refer to confidential business information.

(9) The term *Class I area* refers to a mandatory Class I Federal area.

(10) The initials *CEMS* refers to continuous emission monitoring system or systems.

(11) The initials *CRP* mean or refer to converter retrofit project.

(12) The initials *dv* mean or refer to deciview, a measure of visual range.

(13) The initials *DOE* mean or refer to United States Department of Energy.

(14) The initials *ESECA* mean or refer to Energy Supply and Environmental Coordination Act of 1974.

(15) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(16) The initials *FGD* mean or refer to flue gas desulfurization.

(17) The initials *FIP* mean or refer to Federal Implementation Plan.

(18) The initials *FLM* mean or refer to Federal Land Managers.
(19) The initials *FUA* mean or refer to Fuel Use Act of 1978.
(20) The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.
(21) The initials *IPM* mean or refer to Integrated Planning Model.
(22) The term *lb/MMBtu* means or refers to pounds per one million British thermal units.
(23) The initials *LDSCR* and *HDSCR* mean or refer to low and high dust Selective Catalytic Reduction, respectively.
(24) The initials *LNB* mean or refer to low NO_X burners.
(25) The initials *LTS* mean or refer to Long-term Strategy.
(26) The initials *MACT* mean or refer to Maximum Achievable Control Technology.
(27) The initials *MW* mean or refer to megawatts.
(28) The initials *NAAQS* mean or refer to National Ambient Air Quality Standard or Standards.
(29) The initials *NEI* mean or refer to National Emissions Inventory.
(30) The initials *NESCAUM* mean or refer to Northeast States for Coordinated Air Use Management.
(31) The initials *NESHAP* mean or refer to National Emission Standards for Hazardous Air Pollutants.
(32) The initials *NO_X* mean or refer to nitrogen oxides.
(33) The initials *NP* mean or refer to National Park.
(34) The initials *NPS* mean or refer to the National Park Service.
(35) The initials *NSCR* mean or refer to Non-Selective Catalytic Reduction.
(36) The initials *NSPS* mean or refer to new source performance standards.
(37) The initials *OFA* mean or refer to Over Fire Air.
(38) The initials *PM* mean or refer to particulate matter.
(39) The initials *$PM_{2.5}$* mean or refer to fine particulate matter with an aerodynamic diameter of less than 2.5 micrometers.
(40) The initials *PM_{10}* mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.
(41) The initials *PSD* mean or refer to Prevention of Significant Deterioration.
(42) The initials *PTE* mean or refer to potential to emit.
(43) The initials *RH* mean or refer to regional haze.
(44) The initials *RHR* mean or refer to the Regional Haze Rule, originally promulgated in 1999 and codified at 40 CFR 51.308–309.
(45) The initials *RMC* mean or refer to Regional Modeling Center.
(46) The initials *RP* mean or refer to Reasonable Progress.
(47) The initials *RPG* or *RPGs* mean or refer to Reasonable Progress Goal(s).
(48) The initials *SCR* mean or refer to Selective Catalytic Reduction.
(49) The initials *SIP* mean or refer to State Implementation Plan.
(50) The initials *SNCR* mean or refer to Selective Non-catalytic Reduction.
(51) The initials *SO_2* mean or refer to sulfur dioxide.
(52) The initials *SOFA* mean or refer to Separated Over Fire Air.
(53) The initials *SRP* mean or refer to Salt River Project Agricultural Improvement and Power District.
(54) The initials *tpy* mean tons per year.
(55) The initials *TSD* mean or refer to Technical Support Document.
(56) The initials *TSF* mean or refer to tons of stone feed.
(57) The initials *ULNB* mean or refer to ultra-low NO_X burners.
(58) The initials *URP* mean or refer to Uniform Rate of Progress.
(59) The initials *VOC* mean or refer to volatile organic compounds.
(60) The initials *VRP* mean or refer to Visibility Restoration Plan.
(61) The initials *WRAP* mean or refer to the Western Regional Air Partnership.

I. Introduction

The purpose of the Federal and state regional haze plans is to achieve a national goal, declared by Congress, of restoring and protecting visibility at 156 Federal class I areas across the United States, most of which are national parks and wilderness areas with scenic vistas enjoyed by the American public. The national goal as described in CAA Section 169A is ''the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from man-made air pollution.'' Arizona has 12 Class I areas, including some of the most magnificent natural areas in our country. Five other Class I areas are close by in neighboring states. Please refer to our previous rulemaking on the Arizona RH SIP for additional background information regarding the CAA, regional haze and EPA's RHR.[1]

EPA has previously acted to approve a number of elements of the Arizona RH SIP, and to disapprove others. In today's final action, EPA is reducing harmful emissions from six facilities that contribute to visibility impairment in 17 protected national parks and wilderness areas in Arizona and neighboring states. Four of the facilities are subject to Best Available Retrofit Technology (BART) controls for emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2), and particulate matter (PM). The other two facilities are subject to limits on their NO_X emissions pursuant to the Reasonable Progress (RP) provisions of the Regional Haze Rule (RHR). The BART sources are Sundt Generating Station Unit 4, Nelson Lime Plant Kilns 1 and 2, Hayden Smelter, and Miami Smelter. The RP sources are the Phoenix Cement Clarkdale Plant Kiln 4 and CalPortland Cement Rillito Plant Kiln 4. EPA is promulgating this partial FIP because we found that Arizona had failed to submit a complete RH SIP, and later disapproved portions of Arizona's RH SIP for not meeting all the requirements of the CAA and EPA's RHR.

EPA has worked with the owners and operators of the facilities regulated by today's rule to ensure we have the most up-to-date information for making decisions on BART, RP, and the Long-Term Strategy (LTS), the three major requirements of the RHR. In today's notice, we respond to comments on our proposed rule, present our analysis, and indicate where we have made adjustments based on the comments and additional information. The required emission limits, compliance methods, and deadlines for compliance in our final rule are compatible with each facility's operations, and provide sufficient flexibility for achieving compliance in a reasonable period of time. In several instances we have adjusted the emission limits, averaging times and/or compliance deadlines in response to additional information supplied by the facilities' owners or operators. Further, in the case of TEP Sundt Unit 4, we have included an alternative to BART controls suggested by the facility's owner, which provides better emission reductions to improve visibility.

Given the combination of State and Federal plans to implement the regional haze program in Arizona, EPA and the Arizona Department of Environmental Quality (ADEQ) must continue to rely on their historically strong partnership under the CAA to protect the environment and human health. We would welcome a State plan to replace some or all of the Federal plan. Moreover, we commit our resources to ensuring a successful regional haze program for Arizona. EPA estimates today's action will result in annual emission reductions of about 2,900 tons/year of NO_X and 29,300 tons/year of SO_2. These reductions are expected to benefit at least 17 Class I areas in four states, including Arizona.

II. History of State and Federal Plans

A. State Submittals and EPA Actions

EPA made a finding on January 15, 2009, that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze.[2] Specifically, EPA found that Arizona failed to submit the plan elements required by 40 CFR 51.309(d)(4) and (g). In 2011 ADEQ submitted a SIP under section 308 of the

[1] 77 FR 75704, 75707–75702 (December 21, 2012).

[2] 74 FR 2392.

RHR, but did not withdraw its 309 SIP. EPA disapproved Arizona's 309 SIP (with the exception of several smoke management rules) on August 8, 2013.[3] Both of the Arizona RH SIPs are available to review in the docket for this final rule.[4]

As shown in Table 1, the first phase of EPA's action on the 2011 RH SIP addressed three BART sources. The final rule for the first phase (a partial approval and partial disapproval of the State's plan and a partial FIP) was published in the **Federal Register** on December 5, 2012. The emission limits on the three sources will improve visibility by reducing NO_X emissions by about 22,700 tpy. In the second phase of our action, we proposed on December 21, 2012, to approve in part and disapprove in part the remainder of the 2011 RH SIP. Subsequently, ADEQ submitted a supplement to the Arizona RH SIP (''SIP Supplement'') on May 3, 2013, to correct certain deficiencies identified in that proposal. We then proposed on May 20, 2013, to approve in part and disapprove in part the SIP Supplement. Our final rule approving in part and disapproving in part the Arizona RH SIP was published on July 30, 2013. In the third phase of our action, we proposed a FIP on February 18, 2014, to address the remaining disapproved portions of the State's plan, which we are finalizing today.

TABLE 1—EPA'S ACTIONS ON THE ARIZONA RH SIP AND FIP

EPA actions		Federal Register	
		Proposed rule	Final rule
Phase 1:			
SIP, FIP	BART determinations for Apache, Cholla and Coronado.	July 20, 2012 (77 FR 42834)	December 5, 2012 (77 FR 72512).
Phase 2:			
SIP	Partial approval and partial disapproval of remaining elements of the SIP, including SIP Supplement.	December 21, 2012 (77 FR 75704), May 20, 2013 (78 FR 29292).	July 30, 2013 (78 FR 46142).
Phase 3:			
FIP	FIP for remaining disapproved elements of the SIP.	February 18, 2014 (79 FR 9318)	Today's Final Action.

B. EPA's Authority To Promulgate a FIP

Under CAA section 110(c), EPA is required to promulgate a FIP at any time within 2 years of the effective date of a finding that a state has failed to make a required SIP submission or has made an incomplete submission, or of the date that EPA disapproves a SIP. The FIP requirement is terminated only if a state submits a SIP, and EPA approves that SIP as meeting applicable CAA requirements before promulgating a FIP. Specifically, CAA section 110(c) provides that EPA ''shall promulgate'' a FIP ''at any time within 2 years'' after finding that ''a State has failed to make a required submission'' or that the SIP or SIP revision submitted by the State does not satisfy the minimum criteria established under CAA section 110(k)(1)(A), or after disapproving a SIP in whole or in part ''unless the State corrects the deficiency'' EPA approves the plan or plan revision before promulgating a FIP.

Section 302(y) defines the term ''Federal implementation plan'' in pertinent part, as a plan (or portion thereof) promulgated EPA ''to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy'' in a SIP, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions or emissions allowances).

In the case of the Arizona RH SIP, two different triggering events have occurred under section 110(c). EPA has made a finding that the State failed to make a required submission,[5] and we have partially disapproved the submissions that the State subsequently made. Therefore, EPA is required under CAA section 110(c) to promulgate a FIP for the portions of the Arizona RH SIP that we disapproved on July 30, 2013.

III. Summary of Proposed Rule

In this section, we provide a summary of the proposed rule that was published in the **Federal Register** on February 18, 2014,[6] as background for understanding today's final action.

A. Regional Haze

Our proposed rule included proposed BART determinations for four sources and proposed RP determinations for nine sources. These determinations resulted in proposed emission limits, compliance schedules, and other requirements for four BART sources and two of the RP sources. The proposed regulatory language was included under Part 52 at the end of that document. We also addressed the reasonable progress goals (RPGs), as well as the requirements of the LTS. Lastly, we proposed that the approved measures in the Arizona RH SIP, and measures in our previously promulgated FIP and proposed FIP, would adequately address the interstate transport of pollutants that affect visibility.

1. Proposed BART Determinations

Sundt Generating Station Unit 4: EPA proposed to find that Sundt Unit 4 is BART-eligible and subject to BART for NO_X, SO_2, and particulate matter of less than 10 micrometers (PM_{10}). For NO_X, we proposed an emission limit of 0.36 lb/MMBtu as BART, which is consistent with the use of Selective Non-Catalytic Reduction (SNCR) as a control technology. For SO_2, we proposed an emission limit of 0.23 lb/MMBtu as BART on a 30-day boiler operating day (BOD) rolling basis, which is consistent with the use of dry sorbent injection (DSI) as a control technology. For PM_{10}, we proposed a filterable PM_{10} emission limit of 0.030 lb/MMBtu as BART based on the use of the unit's existing fabric filter baghouse. We also proposed a switch to natural gas as a better-than-BART alternative to the proposed BART controls for all three pollutants.

Nelson Lime Plant Kilns 1 and 2: EPA proposed to find that Nelson Lime Kilns 1 and 2 are subject to BART for NO_X, SO_2, and PM_{10}. For NO_X, we proposed a BART emission limit at Kiln 1 of 3.80

[3] 78 FR 48326.

[4] ''Arizona State Implementation Plan, Regional Haze under Section 308 of the Federal Regional Haze Rule,'' February 28, 2011.

[5] 74 FR 2392–93 (January 15, 2009).

[6] 79 FR 9318–9378.

lb/ton of lime and at Kiln 2 of 2.61 lb/ton of lime on a 30-day rolling basis as verified by continuous emission monitoring systems (CEMS). These emission limits are consistent with the use of low-NO_X burners (LNB) and SNCR as control technologies. We proposed that BART for SO_2 is an emission limit of 9.32 lb/ton of lime for Kiln 1 and 9.73 lb/ton of lime for Kiln 2 on a 30-day rolling basis, which is consistent with the use of a lower sulfur fuel blend. For PM_{10}, we proposed a BART emission limit of 0.12 lb/tons of stone feed (TSF) at Kilns 1 and 2 based on the use of the unit's existing fabric filter baghouses.

Hayden Smelter: EPA proposed that the Hayden Smelter is subject to BART for NO_X, and we proposed BART emission limits for NO_X and SO_2. We previously approved the State's determination that the Hayden Smelter is subject to BART for SO_2, but disapproved the State's SO_2 BART determination. For NO_X, we proposed an annual emission limit of 40 tons per year (tpy) of NO_X emissions from the BART-eligible units, which is consistent with current emissions from these units. For SO_2 from the converters, we proposed a BART control efficiency of 99.8 percent on a 30-day rolling basis on all SO_2 captured by primary and secondary control systems, which can be achieved with a new double contact acid plant. For SO_2 from the anode furnaces, we proposed a work practice standard requiring that the furnaces be charged only with blister copper or higher purity copper. We previously approved Arizona's determination that BART for PM_{10} at the Hayden Smelter is no additional controls. In order to ensure the enforceability of this determination, we proposed to incorporate the emission limits and associated compliance requirements of the Maximum Achievable Control Technology (MACT),[7] Subpart QQQ, as part of the LTS.

Miami Smelter: EPA proposed that the Miami Smelter is subject to BART for NO_X, and we proposed BART emission limits for NO_X and SO_2. EPA previously approved the State's determination that the Miami Smelter is subject to BART for SO_2, but disapproved the State's SO_2 BART determination. For NO_X, we proposed an annual emission limit of 40 tpy NO_X emissions from the BART-eligible units, which is consistent with current emissions. For SO_2 from the converters, we proposed a BART control efficiency of 99.7 percent on a 30-day rolling basis on all SO_2 emissions captured by the primary and secondary control systems as verified by CEMS. This control efficiency could be met through improvements to the primary capture system, construction of a secondary capture system, and application of the MACT Subpart QQQ requirements to the capture systems. For SO_2 emissions from the electric furnace, we proposed as BART a work practice standard to prohibit active aeration. We previously approved Arizona's determination that BART for PM_{10} at the Miami Smelter is the MACT for Primary Copper Smelting. We proposed to find that the federally enforceable provisions of the MACT, which apply to the Miami Smelter and are incorporated into its Title V Permit, are sufficient to ensure the enforceability of this determination.

2. Proposed RP Determinations

Point Sources of NO_X: EPA conducted source-specific RP analyses of potential NO_X controls for non-BART units at nine different sources. Based on these analyses, we proposed to require controls on two cement kilns: PCC Clarkdale Kiln 4 and CPC Rillito Kiln 4. Specifically, EPA proposed an emission limit of 2.12 lb/ton on Kiln 4 of the Clarkdale Plant based on a 30-day rolling average, which is consistent with SNCR as a control technology. We proposed an emission limit of 2.67 lb/ton on Kiln 4 of the Rillito Plant based on a 30-day rolling average, which also is consistent with SNCR as a control technology. We also requested comment on the possibility of requiring a rolling 12-month limit on NO_X emissions in lieu of a lb/ton emission limit at these facilities. For the remaining seven sources, as well as other units at CPC, we proposed to find that it was reasonable not to require NO_X controls during this planning period. These sources are the CPC Rillito Plant (Kilns 1–3); Arizona Public Service (APS) Cholla (Unit 1); El Paso Natural Gas (EPNG) Tucson, Flagstaff, and Williams Compressor Stations; TEP Sundt (Units 1–3); Ina Road Sewage Plant; and TEP Springerville (Units 1 and 2).

Area Sources of NO_X and SO_2: We proposed to find that it is reasonable not to require additional controls on area sources at this time. Primarily, these area source categories are distillate fuel oil combustion in industrial and commercial boilers and in internal combustion engines, and residential natural gas combustion. While the State's area sources currently contribute a relatively small percentage of the visibility impairment at impacted Class I areas, we recommended better emission inventories and an improved RP analysis in the next planning period for area sources.

Reasonable Progress Goals: EPA proposed RPGs consistent with a combination of control measures that include those in the approved portion of the Arizona RH SIP and in EPA's finalized and proposed FIPs. While not quantifying a new set of RPGs based on these control measures, we proposed that it is reasonable to assume improved levels of visibility at Arizona's 12 Class I areas by 2018 because the measures in the FIPs produce emissions reductions that are significantly beyond those required by the State.

Demonstration of Reasonable Progress: EPA proposed to find that it is reasonable not to provide for rates of progress at the 12 Class I areas consistent with the uniform rate of progress (URP) in this planning period.[8] We also proposed to find that the RP analyses underlying our actions on the Arizona RH SIP [9] and FIP are sufficient to demonstrate that it is reasonable not to provide for rates of progress in this planning period that would attain natural conditions by 2064.[10] Lastly, we approved the State's decision not to require additional controls (i.e., controls beyond what the State or we determine to be BART) on point sources of SO_2.[11]

3. Long-Term Strategy

EPA proposed to find that provisions in the Arizona RH SIP and FIP fulfill the requirements of 40 CFR 51.308(d)(3)(ii), (v)(C) and (v)(F). These requirements are to include in the LTS measures needed to achieve emission reductions for out-of-state Class I areas, emission limitations and schedules for compliance to achieve the RPGs, and enforceability provisions for emission limitations and control measures.[12] We proposed to promulgate emission limits, compliance schedules, and other requirements for four BART sources and two RP sources to complete this part of the FIP for these requirements.

B. Interstate Transport of Pollutants That Affect Visibility

We have proposed that a combination of SIP and FIP measures will satisfy the FIP obligation for the visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS. CAA section 110(a)(2)(D)(i)(II) requires that all SIPs contain adequate

[7] National Emission Standard for Hazardous Air Pollutants for Primary Copper Smelting at 40 CFR Part 63.

[8] 40 CFR 51.308(d)(1)(ii).

[9] See proposed actions at 77 FR 75727–75730, 78 FR 29297–292300 and final action at 78 FR 46172.

[10] 40 CFR 51.308(d)(1)(ii).

[11] 78 FR 46172.

[12] See 78 FR 46173 (codified at 40 CFR 52.145(e)(ii)).

provisions to prohibit emissions that will interfere with other states' required measures to protect visibility. We refer to this as the interstate transport visibility requirement.

IV. Overview of Final Action

We are promulgating a FIP to address the remaining disapproved portions of the Arizona RH SIP.[13] We include in Section V below a summary of our responses to comments on our proposed FIP,[14] and describe where comments resulted in revisions to the proposal. In this section, we provide a summary of the final BART determinations, RP determinations, RPGs and demonstration, LTS provisions, and interstate transport provisions of the FIP. This final FIP also includes emission limits, compliance schedules and requirements for equipment maintenance, monitoring, testing, recordkeeping, and reporting for all affected sources and units. The final regulatory language for the FIP is under Part 52 at the end of this notice.

A. BART Determinations

EPA conducted BART analyses and determinations for four sources: Sundt Generating Station Unit 4, Nelson Lime Plant Kilns 1 and 2, the Hayden Smelter, and the Miami Smelter. The final BART determinations are listed in Table 2, comparing the final limits to the proposed limits with short descriptions of changes in the footnotes. The exact compliance deadlines will be calculated based upon the date that this document is published in the **Federal Register**, which we anticipate will occur sometime in July 2014.

Sundt Generating Station: In this final rule, we have retained the BART determination and the final BART emission limits as proposed, as well as the option of a better-than-BART alternative that was submitted by TEP. Although the final BART determination and limits are the same, we have made some changes to the better-than-BART alternative based on comments and additional information.

Regarding BART, we are finalizing our determination that Sundt Unit 4 is BART-eligible and subject to BART for SO_2, NO_X, and PM_{10}. The final BART emission limits are the same as proposed. The NO_X emission limit is 0.36 lb/MMBtu, which is equivalent to using SNCR with the existing LNB as control technologies. The SO_2 emission limit is 0.23 lb/MMBtu on a 30-day BOD rolling basis, which is consistent with using DSI as a control technology. The PM_{10} emission limit is 0.030 lb/MMBtu based on the use of the existing fabric filter baghouse. Compliance is required within three years of the publication of this notice in the **Federal Register**, also as proposed.

Regarding the better-than-BART alternative to switch to natural gas, we are finalizing the proposed emission limit for NO_X of 0.25 lb/MMBtu, but revising the SO_2 and PM_{10} emission limits. The final SO_2 limit is increased from 0.00064 to 0.054 lb/MMBtu to allow for continued co-firing with landfill gas that has a higher sulfur content than pipeline natural gas. The final PM_{10} limit relies on a performance test due to the uncertainties related to switching from coal to gas, which now includes measuring condensable, in addition to filterable, PM_{10}. Further, we have extended the final compliance deadline by six months to December 31, 2017, consistent with the date that TEP initially included in its better-than-BART proposal. TEP is required to notify EPA regarding its selection of BART or the alternative by March 2017.

Nelson Lime Plant: EPA is finalizing its determination that Nelson Lime Plant Kilns 1 and 2 are subject to BART for NO_X, SO_2, and PM_{10}. We have revised the final emission limits for NO_X and SO_2 to account for startup and shutdown emissions, which were not considered in LNA's original BART analysis that was submitted to EPA for consideration. This change to the emission limits for NO_X and SO_2 does not change the corresponding control technologies, which are still SNCR and lower sulfur fuel, respectively. The final BART emission limit for PM_{10} is 0.12 lb/ton for each kiln as proposed, equivalent to using the existing baghouse.

We are making the following revisions to the NO_X limits in response to comments received on our proposal. First, we are revising the averaging time for the lb/ton limits to a 12-month rolling average instead of a 30-day rolling average. The longer 12-month averaging time should even out the emission spikes from startup and shutdown events that would more significantly influence a 30-day average. Second, we are requiring an optimization plan to assess the final BART emission limit for NO_X based on a 12-month rolling average, which is 3.80 lb/ton for Kiln 1 and 2.61 lb/ton for Kiln 2. Third, we are adding a combined limit for Kilns 1 and 2 of 3.27 tons/day on a 30-day rolling average to ensure short-term visibility protection. Both compliance methods (lb/ton at each kiln as optimized and tons/day for both kilns) are equivalent to using SNCR control technology. The compliance deadline for the final NO_X emission limit is three years from the publication date, as proposed.

We are making the following revisions to the SO_2 limits in response to comments received on our proposal. First, as with the final limit for NO_X, we are revising the averaging time for the lb/ton limits to a 12-month rolling average instead of a 30-day rolling average to account for emission spikes from startup and shutdown events that would more significantly influence a 30-day average. The final BART emission limits for SO_2 are 9.32 lb/ton for Kiln 1 and 9.73 lb/ton for Kiln 2, as proposed. Second, we are adding a combined limit for Kilns 1 and 2 of 10.1 tons/day to ensure short-term visibility protection. Both compliance methods (lb/ton at each kiln and tons/day at both kilns) are equivalent to using lower sulfur fuel, as proposed. Finally, we have extended the compliance deadline for meeting the final limit for SO_2 from six to 18 months to allow sufficient time for installation of monitoring equipment to demonstrate compliance with the new limits.

Hayden Smelter: EPA is finalizing its determination that the Hayden Smelter is subject to BART for NO_X. We previously approved the State's determination that the Hayden Smelter is subject to BART for SO_2 and PM_{10}, and the State's determination that BART for PM_{10} is equivalent to existing controls. The final BART emission limit for NO_X is 40 tpy and applies to the converters and anode furnaces. The NO_X limit is consistent with current emissions and is the same as proposed. The final BART emission limit for SO_2 from the anode furnaces is equivalent to existing controls, as proposed. For PM_{10}, we are incorporating by reference provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for primary copper smelters [15] to ensure that Arizona's BART determination is made enforceable, as part of the LTS.

We are making a number of revisions to the proposed SO_2 emission limits from the converters in response to comments. For SO_2 emissions from the converters, the final BART emission limits are a 99.8 percent control efficiency on a 365-day rolling average for the primary capture system, and a 98.5 percent control efficiency on a 365-day rolling average for the secondary capture system. The BART limit for the primary capture system corresponds to the existing double contact acid plant, whereas the limit for the secondary capture system is equivalent to a new

[13] 78 FR 46142 (July 30, 2013).

[14] 79 FR 9318 (February 18, 2014).

[15] 40 CFR part 63 subpart QQQ.

amine scrubber as a control technology. We have revised our proposal by applying separate limits to the primary and secondary capture systems in recognition of significant differences in flow volume and SO_2 concentration between the two systems. We revised the averaging time from 30 to 365 days for the primary capture system in recognition that the control efficiency is based on annual acid production and annual SO_2 emissions. In addition, we are finalizing a work practice standard requiring that the primary and secondary capture systems be designed and operated to maximize capture of SO_2 emissions from the converters.

The final compliance deadline for the primary capture and control system to meet the SO_2 limit is three years from publication, as proposed. The final deadlines for the NO_X and PM_{10} limits are also three years from publication. However, we extended the final compliance deadline to meet the SO_2 limit for the secondary capture and control system from three to four years from publication to provide sufficient time to plan and build a new amine scrubber.

Miami Smelter: EPA is finalizing its determination that the Miami Smelter is subject to BART for NO_X. We previously approved the State's determination that the Miami Smelter is subject to BART for SO_2 and PM_{10}, and the State's determination that BART for PM_{10} is equivalent to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for primary copper smelters. The final BART emission limit for NO_X is 40 tpy that applies to the converters and electric furnace. The NO_X limit represents current emissions and is the same as proposed. For SO_2 from the electric furnace, the final BART emission limit is the existing work practice standard to prohibit active aeration. For PM_{10}, we are incorporating by reference provisions of the NESHAP for primary copper smelters [16] to ensure that Arizona's BART determination is made enforceable, as part of the LTS.

For SO_2 from the converters, the final BART emission limit is a control efficiency of 99.7 percent on a 365-day rolling average applied to the combined primary and secondary capture systems on a cumulative mass basis. While the control efficiency of 99.7 percent is the same as proposed, we revised the compliance method from a 30-day average to a 365-day rolling average. We revised the averaging time in response to FMMI's comment that the control efficiency is based on annual acid production and annual SO_2 emissions. The 99.7 percent control efficiency is equivalent to improvements to the primary control system (existing acid plant with a tailstack scrubber) and construction of new secondary capture and control systems. In addition, we are finalizing a work practice standard requiring that the primary and secondary capture systems be designed and operated to maximize capture of SO_2 emissions from the converters.

The final compliance deadlines for SO_2 from the electric furnace as well as the NO_X and PM_{10} limits, are two years from the date of the document's publication. However, we extended the final compliance deadline for SO_2 from the converters to January 1, 2018, to provide sufficient time to plan and build a new secondary capture and control system. We also added a compliance option for the secondary capture system to use either CEMS or to calculate emissions based on the amount of reagent added to the scrubber, because it may be impractical to operate CEMS on the inlet of a new scrubber.

TABLE 2—FINAL EMISSION LIMITS ON BART SOURCES

Source	Units	Pollutants	Proposed limit	Final limit	Measure	Corresponding control technology
Sundt Generating Station.	Unit 4	NO_X	0.36	Same	lb/MMBtu	Selective Non-Catalytic Reduction.
		SO_2	0.23	Same		Dry Sorbent Injection.
		PM_{10}	0.030	Same		Fabric filter baghouse (existing).
	Unit 4 Alternative	NO_X	0.25	Same	lb/MMBtu	Switch to natural gas.
		SO_2	0.00064	0.054.[a]		
		PM_{10}	0.010	Test.[b]		
Nelson Lime Plant	Kiln 1	NO_X	3.80	Same[c]	lb/ton[d]	Selective Non-Catalytic Reduction.
				3.27	tons/day[e]	
		SO_2	9.32	Same	lb/ton.[d]	Lower sulfur fuel.
				10.1	tons/day.[e]	
		PM_{10}	0.12	Same	lb/ton	Fabric filter baghouse (existing).
	Kiln 2	NO_X	2.61	Same[c]	lb/ton[d]	Selective Non-Catalytic Reduction.
				3.27	tons/day.[e]	
		SO_2	9.73	Same	lb/ton[d]	Lower sulfur fuel.
				10.1	tons/day.[e]	
		PM_{10}	0.12	Same	lb/ton	Fabric filter baghouse (existing).
Hayden Smelter	All BART Units	NO_X	40	Same	tpy	None.
	Converters 1, 3–5	SO_2	99.8	99.8	Control efficiency.	Primary capture: Double contact acid plant (existing).
				98.5[f]		Secondary capture: New amine scrubber.
	Anode Furnaces 1, 2	SO_2	None	Same	None	Work practice standard.
Miami Smelter	All BART Units	NO_X	40	Same	tpy	None.
	Converters 2–5	SO_2	99.7	Same	Control efficiency.	Improve primary and new secondary capture systems, additional controls as needed.
	Electric Furnace	SO_2	None	Same	None	Work practice standard.

[a] Final limit revised to accommodate co-firing with landfill gas that has higher sulfur content.
[b] Final limit is based on result of initial performance test.
[c] Final limit includes a requirement for SNCR optimization plan.
[d] Final limit is based on rolling 12-month average instead of rolling 30-day average.
[e] Final limit is combined for Kilns 1 and 2 with compliance based on a rolling 30-day average.
[f] Final limit is separate for primary and secondary capture systems.

[16] 40 CFR part 63 subpart QQQ.

B. Reasonable Progress Determinations

Point Sources of NO_X: EPA is finalizing its determination that PCC Clarkdale Plant Kiln 4 and CPC Rillito Plant Kiln 4 are subject to NO_X emission controls under the RP requirements of the RHR as shown in Table 3. We also are finalizing our determination that it is reasonable not to require controls at this time on NO_X emissions from the other seven sources that we evaluated for RP as well as other units at the Rillito Plant. These sources are the CPC Rillito Plant (Kilns 1–3); APS Cholla (Unit 1); El Paso Natural Gas (EPNG) Tucson, Flagstaff, and Williams Compressor Stations; TEP Sundt (Units 1–3); Ina Road Sewage Plant; and TEP Springerville (Units 1 and 2).

Clarkdale Plant Kiln 4: PCC has two options for meeting the RP requirements. It can choose to meet either a lb/ton limit or tons/year limit for NO_X. The final NO_X limit for the first option is the proposed 2.12 lb/ton with a requirement for an SNCR optimization plan. The final lb/ton NO_X limit is based on a 30-day rolling average consistent with SNCR as a control technology. The second option is an 810 tons/year NO_X limit that is achievable by installing SNCR or maintaining clinker production at current levels. The 810 tons/year limit is based on a 12-month rolling average equivalent to a 50 percent reduction in baseline emissions. PCC must notify EPA of the option it has selected no later than July 2018 with a compliance deadline of December 31, 2018.

Rillito Plant Kiln 4: The final RP emission limit for NO_X is 3.46 lb/ton based on a 35 percent control efficiency. We have increased the final limit from the proposed 2.67 lb/ton that was based on a 50 percent control efficiency in response to additional information from CPC regarding constraints on efficiency due to the kiln design. In addition, we are requiring implementation of an SNCR optimization plan to determine if a higher control efficiency is achievable. The final NO_X limit is based on a 30-day rolling average and is consistent with SNCR as a control technology. The compliance deadline is December 31, 2018, the same as proposed.

TABLE 3—FINAL EMISSION LIMITS ON RP SOURCES

Source	Units	Pollutants	Proposed limit	Final limit	Measure	Corresponding control technology
Clarkdale Plant	Kiln 4	NO_X	2.12	Same [a]	lb/ton	Selective Non-Catalytic Reduction.
			810	Same [b]	tons/year	Current Production Levels.
Rillito Plant	Kiln 4	NO_X	2.67	3.46 [c]	lb/ton	Selective Non-Catalytic Reduction.

[a] Final limit includes a requirement for SNCR optimization plan.
[b] Final limit for second option is in tons/year in lieu of lb/ton.
[c] Final limit includes a requirement for SNCR optimization plan.

Area Sources of NO_X and SO_2: EPA is finalizing its determination that it is reasonable not to require additional controls on Arizona's area sources at this time. Area source categories such as distillate fuel oil combustion in boilers and internal combustion engines as well as residential natural gas combustion currently contribute a relatively small percentage of the visibility impairment at Class I areas, but should be considered for controls in future planning periods.

C. Reasonable Progress Goals and Demonstration

Reasonable Progress Goals: EPA is quantifying our proposed RPGs (in deciviews) for the 20 percent worst days and 20 percent best days in 2018. The RPGs for Arizona's 12 Class I areas account for the emission reductions from BART and RP control measures in the final RH FIP. The RPGs reflect the results of our BART analyses and our RP analysis of point sources of NO_X and area sources of NO_X and SO_2 as described in our proposal and in response to comments in today's final rule. The RPGs also include the effects of the three BART determinations finalized in our Phase 1 FIP and the effects of other existing State and Federal controls. Today's final RPGs provide for an improvement in visibility on the worst days and no degradation in visibility on the best days during this planning period.

Demonstration of Reasonable Progress: EPA's final determination is that it is not reasonable to provide for rates of progress at Arizona's 12 Class I areas that would attain natural visibility conditions by 2064 (i.e., the URP).[17] Our demonstration that a slower rate of progress is reasonable is based on the RP analyses performed by us and the State that considered the four statutory RP factors. Although progress is slower than the URP, the FIP provides for RPGs that reflect an improved rate of progress and a significantly shorter time period to reach natural visibility conditions at each of Arizona's Class I areas, compared with the RPGs in the Arizona RH SIP.

D. Long-Term Strategy

EPA is finalizing its determination that provisions in this final rule in combination with provisions in the approved Arizona RH SIP and the Phase 1 Arizona RH FIP [18] fulfill the requirements for the LTS.[19] In this final rule, we are promulgating emission limits, compliance schedules and other requirements for four BART sources and two RP sources. This final action completes the LTS measures needed to achieve emission reductions for out-of-state Class I areas, emission limitations and schedules for compliance to achieve the RPGs, and enforceability of emission limitations and control measures.[20] In particular, as explained above, we are incorporating by reference provisions of the NESHAP for primary copper smelters to ensure that Arizona's BART determinations for PM_{10} at the Hayden and Miami Smelters are made enforceable and are included in the applicable implementation plan.

E. Interstate Visibility Transport

EPA is finalizing its determination that the control measures in the Arizona RH SIP and FIP are adequate to prevent Arizona's emissions from interfering with other states' required measures to protect visibility. Thus, the combined measures from both plans satisfy the interstate transport visibility requirement of CAA section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS. In our final rule published on July 30, 2013, EPA disapproved these

[17] 40 CFR 51.308(d)(1)(ii).

[18] 77 FR 75512–72580, December 5, 2012.

[19] 40 CFR 51.308(d)(3)(ii), (v)(C) and (v)(F).

[20] See 78 FR 46173 (codified at 40 CFR 52.145(e)(ii)).

SIP submittals with respect to the interstate transport visibility requirement for each of these NAAQS, triggering the obligation for EPA to promulgate a FIP.[21]

F. Other Changes From Proposal

Our proposed regulatory text incorporated by reference certain provisions of the Arizona Administrative Code that establish an affirmative defense for excess emissions due to malfunctions. We did not receive any comments on this aspect of our proposal. Following the close of the public comment period, the United States Court of Appeals for the D.C. Circuit issued a decision concerning various aspects of the NESHAP for Portland cement plants issued by EPA in 2013, including the affirmative defense provision of that rule.[22] The court found that EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts lies exclusively with the courts, not EPA. The court did not address whether such an affirmative defense provision could be properly included in a SIP. However, the court's holding makes it clear that the CAA does not authorize promulgation of such a provision by EPA. In particular, the court's decision turned on an analysis of CAA sections 113 (''Federal enforcement'') and 304 (''Citizen suits''). These provisions apply with equal force to a civil action brought to enforce the provisions of a FIP. The logic of the court's decision thus applies to the promulgation of a FIP and precludes EPA from including an affirmative defense provision in a FIP. Therefore, we are not including an affirmative defense provision in the final FIP.

We note that, if a source is unable to comply with emission standards as a result of a malfunction, EPA may use case-by-case enforcement discretion, as appropriate. Further, as the D.C. Circuit recognized in an EPA or citizen enforcement action, the court has the discretion to consider any defense raised and determine whether penalties are appropriate.[23]

V. Responses to General Comments

A. Introduction

EPA provided 60 days for the public to submit comments on the proposed rule, with the comment period concluding on March 31, 2014. We held two public hearings in Arizona, one on February 25, 2014, in Phoenix and another on February 26, 2014, in Tucson. The deadline for public comments was March 31, 2014. Certified records of the public hearings, written comments (excluding any confidential business information (CBI) materials), a summary of comments, and a list of commenters are available in the docket for this final action. We received a total of 24 written comments from industry or industrial associations (13), environmental groups (6), citizens (3), a state agency (1), and a federal agency (1). In addition, 14 individuals presented oral testimony at the two hearings. Summaries of significant comments and EPA's responses, organized by subject matter, are provided in the following sections. Because we received no comments regarding the LTS or interstate transport provisions of the FIP, there is no section in this notice addressing comments on these topics.

We are using the following acronyms to refer to representatives of the following entities who submitted comments to us:

- ACCCE—American Coalition for Clean Coal Energy
- ADEQ—Arizona Department of Environmental Quality
- AMA—Arizona Mining Association
- ANGA—America's Natural Gas Alliance
- ASARCO—American Smelting and Refining Company
- CPC—CalPortland Company
- Earthjustice [24]
- EPNG—El Paso Natural Gas Company
- FMMI—Freeport-McMoRan Miami, Inc.
- LNA—Lhoist North America of Arizona
- NMA—National Mining Association
- NPS—National Park Service
- PCC—Phoenix Cement Company
- PSR—Physicians for Social Responsibility
- TEP—Tucson Electric Power
- TPMEC—Tucson Pima Metropolitan Energy Commission

B. Comments on State and EPA Actions on Regional Haze

Comment: One commenter, a former member of the Technical Oversight Committee of the Western Regional Air Partnership (WRAP), recounted the history of the Grand Canyon Visibility Transport Commission and the WRAP, and their efforts under section 309 of the original RHR to develop emission reduction milestones through 2018 for SO_2 emissions from large industrial sources in the nine-state Commission Transport Region that affects the Colorado Plateau. The commenter noted that Arizona ultimately withdrew from the section 309 process, but asserted that the State's withdrawal should not negate the effort of setting the milestones and the agreements reached during that process. The commenter asserted that by rejecting Arizona's SIP and proposing a FIP, EPA has gone beyond what was agreed on as a reasonable expectation of BART for specific groups of sources, such as smelters, utilities, and cement plants. The commenter added that the new SO_2 NAAQS will require plants to make changes that go well beyond BART. Therefore, BART should be set at a level no more stringent than what WRAP proposed so as not to interfere with any plans for the nonattainment areas to come into compliance with the new SO_2 standard.

Response: These comments largely pertain to EPA's partial disapproval of Arizona's 308 RH SIP and are therefore untimely, as EPA has already taken final action on the SIP.[25] Furthermore, EPA has already disapproved the majority of Arizona's 309 RH SIP.[26] As explained further below in response to similar comments regarding the Hayden and Miami Smelters, this FIP will not adversely impact the smelters' ability to come into compliance with the 1-hour SO_2 NAAQS.

C. Comments on State and Federal Roles in the Regional Haze Program

Comment: Several commenters (ADEQ, FMMI, AMA, ACCCE and NMA) do not agree with EPA's partial disapproval of Arizona's RH SIP, asserting that EPA has overstepped its boundaries by unnecessarily imposing a FIP. Some of the commenters contend that states are best suited to make BART determinations, not EPA.

ADEQ noted that the RHR is not intended to protect public health, but to address visibility problems. In the commenter's opinion, EPA should have given the State of Arizona the

[21] 78 FR 46142, July 30, 2013.

[22] *NRDC* v. *EPA,* 2014 U.S. App. LEXIS 7281 (D.C. Cir.).

[23] Id. at 24 (arguments that violations were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises).

[24] Comments were provided by Earthjustice on behalf of the National Parks Conservation Association, Sierra Club, San Juan Citizens Alliance, and Arizona Chapter of Physicians for Social Responsibility.

[25] 78 FR 46142.

[26] 78 FR 48326.

opportunity to correct specific issues in the SIP, instead of proceeding with a FIP. Citing to CAA section 110(c), ADEQ asserted that EPA should end this rulemaking and allow ADEQ a period of up to two years to correct any deficiencies in its RH SIP. ACCCE discussed the history of the regional haze program and emphasized the discretion provided to states under the CAA and the RHR. FMMI stated that EPA lacks the authority to disapprove a SIP and promulgate the proposed FIP based on its policy disagreements with a state. AMA and NMA asserted that EPA had overstepped its boundaries and should leave the decision of what constitutes BART and reasonable progress to the State of Arizona. NMA proceeded to argue that this is not the first example of EPA going beyond its authority as it relates to regional haze, since it has replaced the regional haze determinations of 14 states with its own federal requirements. NMA went on to say that in the case of the Arizona RH SIP, EPA disapproved parts of the plan due to its own subjective opinion and not because the SIP was inconsistent with the requirements of the CAA.

Response: To the extent these comments pertain to EPA's partial disapproval of the Arizona RH SIP or other previous SIP actions, they are untimely. To the extent that the comments are relevant to the proposed FIP, we do not agree with their substance. While it is our strong preference that state plans implement CAA requirements, there are circumstances in which a FIP is required by the Act. As explained in response to comments on the Phase 1 Final Rule [27] and our legal brief responding to petitions for review of that rule,[28] we are required by the CAA to issue a FIP to meet all requirements of the RHR not addressed by an approved SIP revision. In particular, CAA section 110(c) requires EPA to promulgate a FIP at any time within two years of (1) finding that a State has failed to make a required submission, or (2) disapproving a State submission in whole or in part. This obligation is eliminated only if ''the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal Implementation plan.'' In this instance, two different triggering events under section 110(c) have occurred: EPA has made a finding that the State failed to make a required submission and has partially disapproved the submissions that the State subsequently made.

EPA found that Arizona had failed to submit a comprehensive regional haze SIP in January 2009, which triggered an obligation for EPA to promulgate a FIP within two years, unless the State first submitted and EPA approved a regional haze SIP.[29] When EPA failed to either approve a SIP or promulgate a FIP by the January 2011 deadline, we were sued by a group of conservation organizations.[30] In order to resolve this lawsuit, EPA entered into a Consent Decree that established deadlines for action on regional haze plans for various states, including Arizona. This decree was entered and later amended by the United States District Court for the District of Columbia over the opposition of Arizona.[31] Under the terms of the Consent Decree, as amended, EPA was subject to three sets of deadlines for taking action on the Arizona RH SIP as listed in Table 4. The specific deficiencies that commenters claim to have identified in EPA's proposal are addressed in subsequent responses.

TABLE 4—CONSENT DECREE DEADLINES FOR EPA TO ACT ON THE ARIZONA RH SIP AND FIP

EPA actions	Proposed rule signature date	Final rule signature date
Phase 1—BART determinations for Apache, Cholla and Coronado	July 2, 2012 [a]	November 15, 2012.[b]
Phase 2—All remaining elements of the Arizona RH SIP	December 8, 2012 [c]	July 15, 2013.[d]
Phase 3—FIP for disapproved elements of the Arizona RH SIP	January 27, 2014 [e]	June 27, 2014.

[a] Published in the **Federal Register** on July 20, 2012, 77 FR 42834.
[b] Published in the **Federal Register** on December 5, 2012, 77 FR 72512.
[c] Published in the **Federal Register** on December 21, 2012, 77 FR 75704.
[d] Published in the **Federal Register** on July 30, 2013, 78 FR 46142. Also addresses supplemental proposal published in the **Federal Register** on May 20, 2013, 78 FR 29292.
[e] Published in the **Federal Register** on February 18, 2014.

In Phase 1, EPA approved in part and disapproved in part Arizona's BART determinations for Apache Generating Station, Cholla Power Plant, and Coronado Generating Station, and promulgated a FIP addressing the disapproved portions of the SIP.[32] In our initial Phase 2 proposal, EPA proposed to approve in part and disapprove in part the remainder of the Arizona RH SIP.[33] In May 2013, ADEQ submitted a SIP Supplement that addressed some of the elements that EPA had proposed to disapprove. We then proposed to approve in part and disapprove in part the SIP Supplement.[34] We finalized our partial approval and partial disapproval on July 30, 2013.[35] We have also disapproved the majority of Arizona's submittal under Section 309 of the RHR.[36] Given these disapprovals, and our previous finding of failure to submit, EPA is required under CAA section 110(c) to promulgate a FIP for the disapproved portions of the SIP. Indeed, even if we had not previously found that Arizona failed to submit a comprehensive regional haze SIP, we nonetheless would be authorized to promulgate a partial FIP following our partial disapprovals of Arizona's 308 and 309 RH SIPs.[37] As noted above, however,

[27] 77 FR 72568–69 (December 5, 2012).

[28] Brief of Respondent, Arizona v. EPA, No. 13–70366 (9th Cir. Dec. 12, 2013) (EPA Phase 1 Brief) at 66–77.

[29] 74 FR 2392–93 (January 15, 2009).

[30] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548).

[31] *Nat'l Parks Conservation Ass'n* v. *Jackson* (D.D.C. Case 1:11–cv–01548), Memorandum Order and Opinion (May 25, 2012), Minute Order (July 2, 2012), Minute Order (November 13, 2012), Minute Order (February 15, 2013), Order (September 6, 2013), and Stipulation to Amend Consent Decree (November 14, 2013). On appeal, the D.C. Circuit upheld the District Court's finding that it lacked jurisdiction over Arizona's objections. *Nat'l Parks Conservation Ass'n* v. *EPA,* 43 ELR 20266 (D.C. Cir. 2013).

[32] 77 FR 72512 (December 5, 2012).

[33] 77 FR 75704 (December 21, 2012).

[34] 78 FR 29292 (May 20, 2013).

[35] 78 FR 46142 (July 30, 2013).

[36] 78 FR 48326 (August 8, 2013).

[37] See EPA v. EME Homer City Generation, 134 S. Ct. 1584 (2014), Slip. Op. at 16 (''After EPA has disapproved a SIP, the Agency can wait up to two years to issue a FIP . . . But EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit.'').

EPA remains willing to work with ADEQ on a SIP that would be designed to replace this FIP once such a SIP was submitted and approved by us.

VI. Responses to Comments on EPA's Proposed BART Determinations

A. Comments on Sundt Generating Station Unit 4

1. BART Eligibility

Comment: Three commenters (ADEQ, TEP, and ACCCE) argued against EPA's proposed finding that Sundt Unit 4 is BART-eligible, and two commenters (Earthjustice and NPS) supported EPA's finding. ADEQ asserted that EPA has no authority to impose BART on Sundt Unit 4 because ADEQ determined that the unit is not BART-eligible. ADEQ noted that under CAA section 169(b)(2)(A), major sources that existed as of August 7, 1962, are considered BART-eligible. However, the statute does not address sources that existed during that time, but were reconstructed after 1977 (Sundt Unit 4 was reconstructed in 1987). According to ADEQ, ''EPA filled that gap by adopting regulations treating 'reconstructed' units as 'new' units.''

ADEQ further noted that the BART Guidelines provide that ''any emissions unit for which a reconstruction 'commenced' after August 7, 1977, is not BART-eligible'' and argued that ADEQ's determination that Sundt Unit 4 is not BART-eligible was consistent with EPA's regulations. ADEQ asserted that EPA rejected the determination on the basis that EPA is not bound by its own guidelines and argued that that it was inappropriate for EPA to fault ADEQ for following guidance that EPA maintains is ''persuasive'' evidence of the requirements of the CAA. The commenter further argued that the BART Guidelines are clear that any unit that was reconstructed after 1977 is not BART-eligible, but that despite this, EPA has indicated that it does not interpret the BART Guidelines to apply to Sundt Unit 4 because the unit never went through prevention of significant deterioration (PSD) permitting. ADEQ argued that ''EPA is not authorized, in the guise of 'interpreting' its BART Guidelines, to engage in what amounts to post-hoc rulemaking, by amending its BART Guidelines to make units that are reconstructed after 1977, but which did not obtain PSD permits BART-eligible.''

ADEQ also commented that EPA has ignored the policy reasons that Congress had for excluding reconstructed units such as Sundt Unit 4 from PSD and other requirements. The commenter noted that the Power Plant and Industrial Fuel Use Act of 1978 (FUA), which amended the Energy Supply and Environmental Coordination Act of 1974 (ESECA), authorized the Department of Energy (DOE) to require electric utilities to convert generating stations using oil and natural gas to using coal to reduce the Unites States' dependency on foreign oil and increase its use of indigenous energy resources. ADEQ stated that because Congress wished to ensure the conversion took place, these units were exempted from ''environmental requirements.'' Therefore, BART should not be required for Sundt Unit 4.

TEP, the owner of the Sundt facility, incorporated by reference the comments it submitted on EPA's proposed partial disapproval of the Arizona RH SIP, in which the commenter opposed EPA's position that Sundt Unit 4 is BART-eligible, and reiterated its position that Sundt Unit 4 is not BART-eligible. Similarly, ACCCE asserted that, ''ADEQ's determination that Sundt Unit 4 was reconstructed in the 1980s, and therefore is not BART-eligible was reasonable and should not have been disapproved by EPA.'' In contrast, Earthjustice and NPS expressed support for EPA's finding that Sundt Unit 4 is BART-eligible because it did not go through PSD review when it was reconstructed in 1987. Earthjustice asserted that a source reconstructed after 1977 must install either BART controls under the regional haze program or Best Available Control Technology (BACT) controls under the PSD program.

Response: To the extent that the comments concern EPA's partial disapproval of the Arizona RH SIP, they are untimely, as EPA has already taken final action on the SIP.[38] Further, we have already addressed many of the commenters' assertions in our proposed and final actions on the SIP and in the Sundt Memo,[39] all of which are included in the docket for this action. To the extent the comments raise new issues, we address them here.

Contrary to ADEQ's assertion, the RHR does not indicate that ''reconstructed'' units are to be treated as ''new'' units for all purposes. In particular, the RHR does not indicate that a source that is reconstructed after 1977 is considered BART-ineligible. Likewise, nothing in the preamble to the 1980 rule regarding Reasonably Attributable Visibility Impairment (RAVI), in which EPA promulgated the definition of ''BART-eligible,'' or the preamble to the 1999 RHR itself suggests that a post-1977 reconstruction would exempt a source from BART.[40] The BART Guidelines do state that ''any emissions unit for which a reconstruction 'commenced' after August 7, 1977, is not BART-eligible.''[41] However, this statement in the BART Guidelines must be read in the context of the applicable regulatory requirements and associated preambles, none of which even mention such an exemption for post-1977 reconstructions. In particular, the preamble to the BART Guidelines indicates that the post-1977 reconstruction exemption set out in the BART Guidelines is limited to ''sources reconstructed after 1977, *which reconstruction had gone through NSR/PSD permitting.''*[42] Although not binding, this statement in the preamble confirms that EPA did not intend to create a blanket exemption for all post-1977 reconstructions in the BART Guidelines. Indeed, it would only make sense to exempt a reconstructed unit from BART if that unit had gone through NSR/PSD permitting to ensure that its emissions were subject to modern-day pollution controls. Sundt Unit 4 never went through such permitting. Thus, we do not agree that we are effectively amending the BART Guidelines or engaging in post hoc rulemaking by applying an interpretation that is consistent not only with the CAA and RHR, but also with the preamble to the BART Guidelines themselves.

We also do not agree that Congress intended to provide a general exemption from all ''environmental requirements'' for units that were converted to coal under the FUA and ESECA. The relevant section of FUA, codified in CAA section 111(a)(8), provides that ''[a] conversion to coal . . . by reason of an order under section 2(a) of the [ESECA] or any amendment thereto, or any subsequent enactment which supersedes such Act . . . shall not be deemed to be a modification *for purposes of paragraphs (2) and (4) of [CAA subsection 111(a)].''*[43] Paragraphs (2) and (4), in turn, contain the definitions of ''new source'' and ''modification'' that apply to the Act's new source performance standards (NSPS) requirements.[44] The definition of ''modification'' in paragraph 111(a)(4) also applies for purposes of the PSD

[38] 78 FR 46142.

[39] 78 FR 75722 and TEP Sundt Unit I4 BART Eligibility Memo (November 21, 2012) (Sundt Memo).

[40] See 45 FR 80084, 64 FR 35714.

[41] 70 FR 39160.

[42] 70 FR 39111.

[43] 42 U.S.C. 7411(a)(8) (emphasis added).

[44] 42 U.S.C. 7411(a)(2) and (4).

provisions of the Act.[45] However, nothing in the Act indicates that Congress intended the exemption in section 111(a)(8) to extend to other provisions of the Act, such as the visibility protection provisions of Section 169A. If Congress had intended to provide such an exemption from BART eligibility for units that were converted to coal under the FUA and ESECA, it could have added such an exemption to section 169A. It did not do so. Thus, for the reasons set out in the Sundt Memo, in our Phase 2 proposed and final rulemakings, and in this response, we are finalizing our proposed determination that Sundt 4 is BART-eligible.

2. BART Analysis and Determination for NO_X

Comment: ADEQ indicated that it does not support EPA's proposed limit for NO_X that is based on SNCR control technology. ADEQ asserted that the significant cost of installing and operating SNCR ($3 million in construction and $1 million in annual operating costs) does not justify the limited visibility improvement that would result from adding this control technology. ADEQ said that EPA's analysis, which ADEQ described as suspect, shows an improvement of only 0.5 dv. ACCCE also objected to EPA's decision to require SNCR, arguing that it is costly and results in no perceptible improvement in visibility. ACCCE discussed the installation costs and the cost-effectiveness of SNCR on Unit 4, and stated that none of the Class I areas affected by Sundt Unit 4 will experience a greater than a 1.0 dv improvement from the installation of SNCR. This ''modest'' improvement is inconsistent, ACCCE said, with EPA's position that considers 1.0 dv change or more from an individual source as causing visibility impairment and a 0.5 dv change as contributing to impairment.

Response: We disagree with these comments. Regarding the costs of compliance, although the installation and operation of SNCR will result in TEP incurring certain initial investments and ongoing operational costs, we consider the total annualized cost warranted based on the amount of NO_X removed and the expected visibility benefits. As noted in our proposed rule, SNCR at this source has a cost-effectiveness of about $3,200/ton, which we consider very cost-effective. With regard to visibility improvement, we do not agree that only visibility improvements that by themselves result in humanly perceptible changes are relevant. The CAA and RHR require, as part of each BART analysis, consideration of ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.'' [46] The Act and RHR do not require that the improvement from a single source be perceptible in order to be meaningful. As EPA explained in the preamble to the BART Guidelines: ''Even though the visibility improvement from an individual source may not be perceptible, it should still be considered in setting BART because the contribution to haze may be significant relative to other source contributions in the Class I area.'' [47] Thus, we disagree that the degree of visibility improvement should be contingent upon perceptibility.

In our visibility improvement analysis, we have not considered perceptibility as a threshold criterion for considering improvements in visibility. Rather, we have considered visibility improvement in a holistic manner, taking into account all reasonably anticipated improvements in visibility expected to result at all Class I areas within 300 kilometers of each source. Improvements smaller than 0.5 dv may be warranted considering the number of Class I areas involved and the baseline contribution to impairment of the source in question. For example, a source with a 0.5 dv impact at a Class I area ''contributes'' to visibility impairment and must be analyzed for BART controls. Controlling such a source will not result in perceptible improvement in visibility, but Congress nevertheless determined that such contributing sources should nevertheless be subject to the BART requirement. In the aggregate, small improvements from controls on multiple BART sources and other sources will lead to visibility progress. As a result, although we described the anticipated visibility benefits from the installation of SNCR as ''modest,'' we still consider those benefits sufficient to justify SNCR as BART in light of the fact that SNCR will be highly cost-effective and has no substantial adverse energy or non-air quality environmental impacts. This has been EPA's consistent interpretation in many regional haze determinations.

Comment: ADEQ indicated that it supports EPA's rejection of an emission limit equivalent to SCR as BART for NO_X at Sundt Unit 4 due to costs. In contrast, Earthjustice asserted that EPA should have set a BART emission limit that reflects the use of SCR at Sundt Unit 4, rather than the less effective SNCR technology. Earthjustice stated that EPA erred when it concluded that the visibility benefits of SCR were not worth the costs after EPA acknowledged that SCR provides substantially greater visibility improvements than SNCR. Earthjustice stressed that EPA's calculated cost-effectiveness value of $5,176 per ton of NO_X removed for SCR is within the range of what has been deemed cost-effective in many other instances, based on examples provided in Exhibit 33 submitted with the comments. Earthjustice added that EPA provided no justifiable rationale for rejecting the overall cost-effectiveness value and relying on the incremental cost-effectiveness value for the rejection. Earthjustice also contended that EPA improperly rejected SCR based on numerous erroneous assumptions in its cost analysis that increased the cost-effectiveness values (i.e., $/ton) for SCR. In particular, Earthjustice asserted that EPA used an unreasonably low capacity factor of 0.49, even though a higher and more appropriate capacity factor would have made the SCR controls more cost-effective. Earthjustice also noted that EPA used a retrofit factor for SCR of 1.5, instead of the standard retrofit factor of 1.0, but asserted that EPA did not provide a sufficient reason to enhance the retrofit factor. According to Earthjustice, correcting these two assumptions would make SCR cost-effective to control NO_X at Sundt Unit 4 at an emission rate of 0.05 lb/MMBtu.

Response: We disagree that we improperly rejected SCR. In reaching our BART determination, we have considered both average and incremental costs as well as expected visibility benefits.[48] In particular, we estimate the average cost-effectiveness of SCR to be $5,176/ton. EPA has not previously required installation of controls with an average cost-effectiveness value this high for purposes of BART.[49] Similarly, the estimated incremental cost-effectiveness for SCR (compared to SNCR) of $6,174/ton is on the high end of what we have required for purposes of BART.[50] Such cost values might be warranted if the expected visibility benefits were very high (i.e., over one deciview at a single Class I area or several cumulative deciviews across multiple affected Class

[45] 42 U.S.C. 7479(2)(C).

[46] CAA section 169A(g)(2), 40 CFR 51.308(e)(1)(ii)(A).

[47] 70 FR 39129.

[48] See 79 FR 9329.

[49] See, e.g., BART EGU FIP Summary.

[50] Id. The only example with a higher incremental cost-effectiveness value is Dave Johnston Unit 3 in Wyoming ($7,583/ton based on a remaining useful life of 20 years).

I areas). However, we do not consider this level of cost to be justified here by the expected visibility benefits for SCR of 0.78 dv for the most improved Class I area and 1.6 dv cumulative for all affected Class I areas.

The information provided by Earthjustice regarding the range of $/ton values considered cost-effective is derived from other regulatory programs such as Best Available Control Technology (BACT) determinations for construction of new sources in attainment areas, and Lowest Achievable Emission Rate determinations for construction of new sources in nonattainment areas. The statutory requirements, calculation methodology, and regulatory drivers that may inform a determination of emission reductions appropriate for these programs are not necessarily comparable to those of the Regional Haze program, which is a retrofit program where older sources are required to add pollution controls. We therefore do not consider it appropriate simply to conclude that costs found to be acceptable in other programs are necessarily appropriate in a BART determination.

We also disagree with Earthjustice's assertion that our cost analysis for SCR is based on faulty assumptions. We recognize that a higher capacity factor would result in an increase in the calculated amount of NO_X reduced. We also recognize that, historically, Sundt Unit 4 operated at higher capacity factors, ranging from 0.60 to 0.75. However, a review of data from EPA's Clean Air Markets Division (CAMD) Acid Rain Program database indicates that, starting in 2009 and continuing into the present, Sundt Unit 4 has consistently operated at substantially lower capacity factors.[51] Our use of a 0.49 capacity factor is therefore not based on a single, abnormal year of low capacity, but rather represents an average of multiple, recent years of low capacity at Sundt Unit 4. Given the length of time that Sundt Unit 4 has operated at these low capacity levels, we consider our use of a 0.49 capacity factor in emission calculations to be a ''realistic depiction of anticipated annual emissions.'' [52]

Moreover, we disagree with the Earthjustice's assertion that our use of a 1.5 retrofit factor is unsupported in the record. Although the factors contributing to retrofit difficulty were summarized as ''certain difficulties'' in our TSD, this information is described in detail in the modeling and cost information provided by TEP on May 10, 2013.[53] Our cost calculations specifically noted the changes we made to account for these factors.[54] Specifically, a detailed description of these issues is contained on page 6, Attachment C, in TEP's letter dated May 10, 2013. These issues include interference from existing boiler structures and material handling equipment that makes the most common SCR reactor impractical, the need for substantial modifications to the existing air preheater, and site congestion around the boiler that complicates siting of an SCR system. We consider these issues sufficient to warrant a higher retrofit factor.

Comment: In response to EPA's request for comment on whether EPA should use a less stringent SCR emission limit in its NO_X BART analysis for Sundt Unit 4, Earthjustice responded in the negative. According to the commenter, EPA's use of a 0.05 lb/MMBtu limit for SCR is consistent with EPA's BART determinations for other coal-fired power plants for which EPA has repeatedly concluded that a 0.05 to 0.055 lb/MMBtu emission limit is BART. In addition, citing reports submitted with the comments, Earthjustice asserted that SCRs often achieve more stringent emission rates and control efficiencies than EPA assumed SCR would achieve at Sundt Unit 4. Earthjustice stated that because a 0.05 lb/MMBtu emission rate is achievable with SCR at Sundt Unit 4, EPA should not use a less stringent emission limit in its BART analysis.

Response: We agree that our use of a 0.05 lb/MMBtu annual average design value for SCR is consistent with other BART determinations for coal-fired power plants.

Comment: Earthjustice stated that if EPA does not revise its BART determination to require SCR, it should set a more stringent emission limit that more accurately reflects the emission reductions achievable with SNCR. Earthjustice quoted the BART Guidelines as requiring EPA to ''take into account the most stringent emission control level that the technology is capable of achieving,'' which Earthjustice said EPA has not done in this case. Earthjustice asserted that EPA should select a level of NO_X reduction for SNCR in the range of 50 percent over and above the existing combustion controls, rather than the level of 30 percent above current controls that was selected. As support, Earthjustice noted that SNCR is required by the pending SIP revision (prepared by ADEQ to replace the FIP) for Apache Unit 3 to reduce NO_X from 0.43 lb/MMBtu down to 0.23 lb/MMBtu, or roughly 50 percent. Earthjustice recommended that EPA set an emission limit for SNCR in the range of 0.22 lb/MMBtu, reflecting 50 percent reduction from the baseline level of 0.445 lb/MMBtu of NO_X in 2011. In addition, Earthjustice disagreed with EPA's inflation of the NO_X emission limit by 17 percent to account for variability. According to Earthjustice, EPA assumed without justification that the observed variability without SNCR would be the same as variability with SNCR.

Response: We disagree with this comment. The Apache Unit 3 example cited by Earthjustice does not support a 50 percent SNCR control efficiency. The 0.43 lb/MMBtu emission rate on Apache Unit 3 noted by Earthjustice reflects the use of over fire air (OFA) only. The 0.23 lb/MMBtu emission rate on Apache Unit 3 noted by Earthjustice reflects the use of LNB with OFA and SNCR. The approximate 50 percent reduction from 0.43 to 0.23 is not solely attributable to SNCR, but rather is the result of the application of LNB and SNCR. Since Sundt Unit 4 already operates with LNB and OFA, we do not consider it appropriate to assume that application of SNCR will result in an additional 50 percent NO_X reduction.

With regard to our upward revision to the annual emission rate to develop a rolling 30 day emission limit, we acknowledge that observed variability without SNCR might not be the same as variability with SNCR. We note, however, that even emission units with well-operated controls will experience some degree of emissions variability. As noted in our proposed rule, we developed this upward revision based on site-specific emission data reported to the CAMD for Sundt Unit 4. Given the site-specific basis for our upward revision, we consider it a reasonable estimate of emission variability. We acknowledge that there might be other methods of accounting for this variability. However, we did not receive any comments that described or proposed any such alternate methodology. Accordingly, we are finalizing the emission limit as proposed.

[51] This emission and generation data was contained in the docket for our proposal, E–45—TEP Sundt4 2001–12 Emission Calcs 2014–01–24.xlsx.

[52] See 70 FR 39167.

[53] TEP's May 10, 2013 letter describing this information was contained in the docket for our proposal, C–37 Letter from Erik Bakken, TEP, to Greg Nudd, EPA, re TEP Sundt Modeling & Cost Information.pdf.

[54] Our cost calculations, which note these upward revisions, were contained in the docket for our proposal, E–05 TEP Sundt4 Control Costs (final for NPRM docket).xlsx.

Comment: NPS indicated that it agrees with the design emission rate of 0.050 lb/MMBtu that EPA used to estimate the control effectiveness of SCR. However, NPS did not agree with the cost of catalyst for SCR of $8,000 per cubic meters ($m^3$), and cited to a recent report indicating the costs are around $5,000/$m^3$. NPS also said that EPA did not consider using regenerated catalyst at a cost of $5,500/$m^3$, which it did in the recent Wyoming RH FIP.

NPS also stated that instead of relying only on the Integrated Planning Model (IPM) to estimate the costs of SCR, NPS used a method similar to what EPA Region 8 used for Colstrip in Montana. In NPS's opinion, using IPM to calculate capital costs and EPA's Control Cost Manual (CCM) to calculate operating costs provides more flexibility, provides greater transparency and is more in line with the BART Guidelines that recommend following EPA's CCM as much as possible.

Response: We disagree with the NPA's assertion that $8,000/$m^3$ is an unreasonable cost estimate for catalyst. Since catalyst prices fluctuate, we recognize that recent prices may be lower than the value used in our cost calculations. However, given that catalyst is an operating cost that will be periodically incurred over the entire useful life of the equipment,[55] we consider it appropriate to use a catalyst price that reflects more than just recent price levels. The BART Guidelines state, ''In order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, where possible'' and that ''[w]e believe that the Control Cost Manual provides a good reference tool for cost calculations, but if there are elements or sources that are not addressed by the Control Cost Manual or there are additional cost methods that could be used, we believe that these could serve as useful supplemental information.'' [56] As noted in our proposed rule and TSD,[57] EPA has used IPM in multiple regulatory actions, and considers it an appropriate source of supplemental information.

3. BART Analysis and Determination for SO_2

Comment: ACCCE opposed EPA's proposal to require DSI for the control of SO_2 emissions at Sundt Unit 4. The ACCCE asserted that this requirement will have no humanly perceptible visibility improvement, so the proposal must be withdrawn. According to ACCCE, the highest visibility improvement expected from this requirement is 0.20 dv at Saguaro National Park. At the other nine affected Class I areas, the visibility improvement is expected to range from only 0.04 to 0.10 dv. ACCCE contended that requiring costly controls with no humanly perceptible visibility improvement is unjustified.

Response: As noted in our response to a similar comment regarding our NO_X BART determination, we have not considered perceptibility as a threshold criterion for considering improvements in visibility. Rather, we have considered visibility improvement in a holistic manner, taking into account all reasonably anticipated improvements in visibility expected to result at all Class I areas within 300 kilometers of each source. Improvements smaller than 0.5 dv may be warranted considering the number of Class I areas involved and the initial contribution to impairment of the source in question. For example, a source with a 0.5 dv impact at a Class I area ''contributes'' to visibility impairment and must be analyzed for BART controls. While controlling such a source will not result in perceptible improvement in visibility, Congress determined that such contributing sources should nevertheless be subject to the BART requirement. In the aggregate, small improvements from controls on multiple BART sources and other sources will lead to visibility progress. As a result, although the anticipated visibility benefit attributable to DSI is not humanly perceptible, we consider those benefits sufficient to justify DSI as BART in light of the fact that DSI will be highly cost-effective and has no substantial adverse energy or non-air quality environmental impacts.

Comment: Earthjustice stated that EPA should revise its BART analysis for SO_2 to reflect more stringent emission rates achievable with wet flue gas desulfurization (FGD) and dry FGD because the BART Guidelines require EPA to analyze the most stringent emission control level that the technology is capable of achieving. According to Earthjustice, EPA assumed that wet FGD would achieve a 0.06 lb/MMBtu emission rate (92 percent control efficiency) and dry FGD would achieve a 0.08 lb/MMBtu emission rate (89 percent control efficiency). Earthjustice argued that these figures were cited despite EPA's acknowledgment that both wet FGD and dry FGD are capable of achieving more stringent emission rates. Earthjustice added that reports submitted with its comments show that both wet and dry FGD can achieve emission rates of 0.04 lb/MMBtu or lower along with control efficiencies of 95 to 99 percent.

Response: We disagree that we underestimated the SO_2 emission reductions achievable with dry or wet FGD. In our proposed rule, and in the TSD for our proposed rule, we stated that:

> [B]oth dry and wet FGD have very high incremental cost-effectiveness values, indicating that while they are more effective than the preceding control, this additional degree of effectiveness comes at a substantial cost.

The incremental cost-effectiveness of dry FGD, in relation to DSI, is approximately $17,000/ton. Assuming a more stringent dry or wet FGD emission rate of 0.04 lb/MMBtu, the incremental cost-effectiveness of FGD, relative to DSI, is approximately $13,000/ton, which is still not within a range that EPA or states have considered cost-effective, especially given that FGD (dry or wet) is expected to result in less visibility improvement than DSI.[58] As a result, a more stringent FGD emission rate would not alter our SO_2 BART determination.

Comment: Earthjustice asserted that EPA improperly raised the proposed SO_2 limit (based on use of DSI) from 0.21 to 0.23 lb/MMBtu. Earthjustice said that this increase was inappropriate, as it was based on SO_2 emission data that did not account for controls. Since proper controls dampen the variability of emissions, Earthjustice said that the emission limit should not be raised to account for variability.

Response: As noted in a response to a similar comment regarding our NO_X BART determination, we acknowledge that observed emissions variability at Sundt Unit 4 without SO_2 controls may not be the same as its emissions variability when operating with DSI. We note, however, that even emission units with well-operated controls will experience some degree of emissions variability. As noted in our proposed rule, we developed this upward revision based on site-specific emission data reported to EPA's CAMD for Sundt Unit 4. Given the site-specific basis for our upward revision, we do not consider it as an unreasonable estimate of emissions variability. We acknowledge that there might be other methods of accounting for this variability. However, we did not receive any comments that described or proposed any such alternate methodology. Therefore, we are finalizing the SO_2 emission limit of 0.23 lb/MMBtu as proposed.

[55] As opposed to capital costs, which are incurred only once, at the start of the project.

[56] BART Guidelines, 40 CFR Part 51, Appendix Y, section IV.D.4.a.

[57] TSD for the Proposed Phase 3 FIP, January 27, 2013, Page 19 of 233.

[58] See 79 FR 9332–33.

4. BART Analysis and Determination for PM_{10}

Comment: ADEQ indicated that it supports EPA's decision to require BART for particulate matter (PM) in terms of a PM_{10} limit of 0.03 lb/MMBtu. While agreeing that fabric filter baghouses are the best technology for PM reductions from Sundt Unit 4, Earthjustice asserted that EPA should set a lower emission limit as BART. According to Earthjustice, stack test results for PM_{10} show that the existing baghouses at Sundt Unit 4 can achieve lower emission rates than the 0.03 lb/MMBtu rate that EPA proposed as BART (citing the TSD at 23). Earthjustice stated that there are hundreds of instances of coal units with baghouses achieving emission rates lower than 0.03 lb/MMBtu, citing the docket for the Mercury Air Toxics Standards (MATS).

Response: We disagree that the proposed 0.030 lb/MMBtu emission limit for filterable PM_{10} is too high. The 0.022 lb/MMBtu emission rate summarized on page 23 of the TSD is the average of multiple test runs that range from 0.016 lb/MMBtu to 0.039 lb/MMBtu.[59] Emission limitations under the CAA must be continuous and BART must be an emission limitation that is achievable.[60] Thus, a BART emission limitation should be one that a facility can continuously achieve. The performance test data indicate that a PM emission limit of 0.030 lb/MMBtu is achievable by the facility, and will also result in actual emission reductions. In addition, the BART limit is substantially lower than the PM limit contained in the facility's current operating permit,[61] substantially decreasing the PM emissions authorized at the facility.

MATS establishes an emission limit of 0.030 lb/MMBtu for filterable PM (as a surrogate for toxic non-mercury metals) as representing MACT for coal-fired electric generating units (EGUs). The BART Guidelines provide that ''unless there are new technologies subsequent to the MACT standards which would lead to cost-effective increases in the level of control, you may rely on the MACT standards for purposes of BART.'' [62] We consider baghouses to be the most stringent PM control technology for coal-fired EGUs. Moreover, the commenter has not identified a new or more stringent technology. As a result, we consider 0.030 lb/MMBtu to be an appropriate continuously achievable BART limit for Sundt Unit 4.

5. Better-than-BART Alternative

Comment: Multiple commenters expressed support for the ''better-than-BART alternative'' for Sundt Unit 4. Sierra Club stated that overall, EPA has done an excellent job in its FIP. However, Sierra Club also asserted that substituting coal with natural gas is not the ultimate solution. The fuel substitution will address the pollution problem associated with coal combustion, but Sierra Club argued that TEP should transition toward renewable energy sources, and be a leader in developing solar, wind, and other renewable sources for the purpose of energy generation.

TEP noted that a fuel change to natural gas meets the RHR's requirements for alternative measures in lieu of BART in that it will achieve greater reasonable progress than the implementation of BART. TEP added that because emissions under BART or the alternative would emanate from the same stack (and therefore the distribution of emissions is not significantly different), the alternative achieves greater reasonable progress simply because it will result in greater emissions reductions. In addition, TEP noted that EPA's finding that ''natural gas provides better visibility improvement than the proposed BART determination'' is consistent with the results of modeling performed by a contractor (AECOM) for TEP. Several other commenters (ADEQ, ANGA, Earthjustice, NPS, TPMEC, Friends of Saguaro National Park and a private individual) expressed general support for the better-than-BART alternative.

Response: We acknowledge the commenters' support of the proposed BART alternative. Today's final rule provides TEP with the option to comply either with the BART limits within three years of publication of the final rule or with the requirements of the BART alternative by December 31, 2017. With regard to the comments concerning renewable energy, we note that the BART Guidelines indicate that ''[w]e do not consider BART as a requirement to redesign the source when considering available control alternatives.'' [63] We therefore consider a requirement for TEP to transition to renewable energy to be beyond the scope of what the RHR requires.

Comment: ACCCE said that the BART alternative should be rejected because it does not lead to an improvement in humanly perceptible visibility. According to ACCCE, EPA stated that switching from coal to natural gas under the better-than-BART alternative will lead to a higher visibility improvement than the combination of SNCR and DSI together. Yet, with one exception, the areas affected by Sundt Unit 4 will not see a greater than 1.0 dv improvement. Again, ACCCE made the case that it is up to the states to make BART-eligibility determinations, but if it is determined that EPA has correctly classified Sundt Unit 4 as BART-eligible, it is Arizona, not EPA, that must finalize a BART determination for the unit. However, if this does not occur, ACCCE reiterated that it disagrees with EPA's analysis to require BART, since it does not result in humanly perceptible visibility improvement.

Response: As explained in response to similar comments on our BART analyses above, visibility improvement is not required to be humanly perceptible in order for a control to be required as BART. Arizona did not include a BART analysis and determination for TEP Sundt 4 in any of its RH SIP submittals. If Arizona submits such a determination in the future, we will give it due consideration under the requirements of the CAA and EPA's implementing regulations.

Comment: TEP stated that the facility has been co-firing landfill gas in the Sundt Unit 4 boiler since 1999, and that this has been an integral part of the company's strategy for complying with Arizona's Renewable Energy Standard and Tariff, as it is among the most cost-effective renewable resources in its portfolio. TEP added that, through the direct displacement of heat input otherwise provided by coal, co-firing landfill gas has resulted in significant avoided emissions of carbon dioxide, SO_2, PM, and other pollutants. TEP asserted that it must be allowed to continue an environmentally beneficial program.

TEP further stated that its current tariff agreement with El Paso Natural Gas Company for natural gas deliveries to Sundt Unit 4 does not meet the fuel-sulfur specification in the definition of ''pipeline natural gas'' in 40 CFR 72.2, but the tariff agreement does meet the sulfur specifications in the definition of ''natural gas'' in 40 CFR 72.2. TEP indicated that it has no direct control over the sulfur content of the natural gas delivered to Sundt, and limiting the fuel burned at Sundt Unit 4 to ''pipeline

[59] The original Method 5 test results are included as Docket Item F–28—TEP Sundt4 Test Results.pdf.

[60] 42 U.S.C. 7602(k) (definition of ''emission limitation''); 40 CFR 51.301 (definition of ''BART'').

[61] 233 lb/hour, per page 2 of the TSD. The BART limit would be equivalent to approximately 41 lb/hour.

[62] BART Guidelines, Section IV.C. ''How does a BART review relate to Maximum Achievable Control Technology (MACT) Standards under CAA section 112, or to other emission limitations required under the CAA?''

[63] BART Guidelines, Section IV.D.1.5.

natural gas'' would prohibit TEP's ability to select the alternative to BART, which TEP and many other stakeholders view as the preferred choice. Accordingly, TEP recommended several revisions to the regulatory language for the better-than-BART alternative that would revise the SO_2 emission limit and fuel restriction to correspond to the definition of ''natural gas'' rather than ''pipeline natural gas'' and provide for co-firing of landfill gas. TEP noted that regardless of the SO_2 emission limit that EPA selects for the alternative to BART, or the method identified to demonstrate compliance with that limit, SO_2 emissions from Sundt Unit 4 under the alternative to BART will be orders of magnitude lower than SO_2 emissions would be through the application of BART.

Response: We agree that the continued co-firing of landfill gas does not adversely affect whether the fuel switch to natural gas achieves greater emissions reductions than the aggregate BART determinations for Sundt Unit 4. We are therefore revising the regulatory language to provide for the co-firing of landfill gas. In addition, we are revising the SO_2 emission limit in the better-than-BART alternative (and the emissions value used to evaluate whether the alternative is better-than-BART) to correspond to the definition of ''natural gas'' per 40 CFR 72.2. These revised emission calculations are contained in our docket, and are summarized in our response to the following comment.[64]

Comment: TEP stated that stack testing to demonstrate compliance with the PM_{10} limit while burning natural gas is unnecessary. According to TEP, the PM_{10} emission limit of 0.010 lb/MMBtu that EPA proposed under the alternative to BART was developed based on a calculation using an AP–42 emission factor, but the proposal requires a compliance demonstration by conducting performance stack testing using EPA Method 201A and Method 202, per 40 CFR part 51, Appendix M. TEP stated that stack testing is a suitable method of determining compliance with an emission limit when either (1) it is necessary to verify that required controls are in place and operating correctly, or (2) to verify that a source is designed and constructed (in the case of a new unit) to meet a particular performance standard. However, according to TEP, neither of those situations applies to implementation of the alternative to BART on Sundt Unit 4, which is essentially a fuel-use limitation. TEP indicated that, while it has no reason to conclude that Sundt Unit 4 could not meet the standard, it has no experience measuring PM_{10} emission levels while burning natural gas. Thus, the inclusion of Method 202 for condensable PM_{10} presents some risk. TEP encouraged EPA to modify the compliance demonstration requirement for PM_{10} to a calculation using AP–42 (as EPA did to set the standard), combined with a demonstration that natural gas is the primary fuel.

Response: We partially agree with this comment. The BART alternative PM_{10} emission limit in the proposed rule (0.01 lb/MMBtu) is based on AP–42 emissions factors for natural gas usage. This factor is based on information that might not represent the emission characteristics of Sundt Unit 4 (i.e., a coal-burning unit that is converted to natural gas). We do not agree, however, that it is appropriate to eliminate entirely the performance test requirement, but recognize that there is a lack of experience and history regarding condensable PM_{10} test results at the Unit. As a result, we are revising the PM_{10} compliance determination to a ''test and set'' approach. An initial performance test for PM_{10}, based on the results of Method 202 plus either Method 5 or Method 201A, is still required along with subsequent performance tests if requested by the Regional Administrator. The results of the initial performance test will establish the PM_{10} limit with which subsequent performance tests must demonstrate compliance. For purposes of evaluating the better-than-BART alternative, our estimate of PM_{10} emissions is based upon this 0.30 lb/ton PM_{10} BART limit. Although this results in PM_{10} emissions equivalent to BART, the natural gas fuel switch still results in a net decrease in both NO_X and SO_2 relative to the respective BART determinations. As a result, this approach does not alter our determination that the natural gas fuel switch is better-than-BART. A comparison of emissions between the BART determination and the revised better-than-BART alternative is summarized in Table 5.

TABLE 5—COMPARISON OF BART DETERMINATION TO BETTER THAN BART ALTERNATIVE

Parameters	Units	BART determination	BART alternative (natural gas fuel switch)	Emission reduction (tpy)
Heat Duty	MMBtu/hour	1,371	1,820	
Capacity Factor	Percentage	0.49	0.37	
NO_X	Control Technology	SNCR+LNB+OFA	LNB+OFA	
	lb/MMBtu	0.31	0.25	
	TPY	912	737	175
SO_2	Control Technology	Dry Sorbent Injection	None	
	lb/MMBtu	0.18	0.057	
	TPY	530	169	361
PM	Control Technology	Fabric Filter	None	
	lb/MMBtu	0.03	0.03	
	TPY	88	88	0

6. Other Comments on Sundt Unit 4

Comment: TEP stated that it generally supports EPA's BART determinations for Sundt Unit 4 because the control technologies selected as BART are available and technically feasible for the control of the respective pollutants. Furthermore, while TEP asserts that the level of visibility improvement achieved by application of these technologies is marginal, they conclude that the identified controls can be installed and operated at Sundt Unit 4 without a significant impact on reliability or customer rates.

[64] See spreadsheet titled ''Revised BART Alternative Emission Calculations.xls.''

Specifically, the SO_2 emission factor for natural gas was revised from 0.00064 lb/MMBtu to 0.057 lb/MMBtu.

Response: We acknowledge TEP's support.

Comment: TEP agreed with EPA's selection of 2011 as the baseline year for Sundt Unit 4's emissions and operating characteristics. In contrast, Earthjustice stated that EPA's BART analyses are flawed due to errors in EPA's emissions baseline and baseline capacity factor. Earthjustice noted that EPA considered Sundt Unit 4's historical emissions from 2008 to 2012, and selected 2011 as the baseline because Sundt Unit 4 predominantly burned coal that year. However, according to Earthjustice, Sundt Unit 4 also burned large amounts of coal in 2008, making it unclear why EPA did not use 2008 instead of, or in addition to, 2011 when determining the baseline (e.g., by creating a baseline averaging 2008 and 2011 emissions).

Response: We disagree with Earthjustice's comment. In 2008, Sundt Unit 4 operated at a much higher capacity factor than in subsequent years. As discussed in a response to a previous comment, we do not consider the higher capacity factors observed during the pre-2009 period to be a realistic depiction of anticipated annual emissions. As a result, we do not consider it appropriate to incorporate 2008 annual emissions into the development of baseline emissions.

Comment: Earthjustice stated that EPA should set a one-year compliance deadline to install BART controls, rather than the proposed three-year deadline. Earthjustice noted that the CAA requires sources to install BART controls as ''expeditiously as practicable,'' and judicial opinions interpreting similar compliance deadlines in the CAA read this language to require compliance as soon as possible. According to Earthjustice, EPA set a three-year compliance deadline to install both DSI and SNCR based on EPA's conclusion that it will take three years to install DSI. The commenter asserted that DSI can be installed in just one year based on the record established for the MATS rulemaking and the rulemaking docket for this action. Earthjustice also noted that EPA has recognized that typical SNCR retrofits take ten to 13 months. Earthjustice stated that it is not aware of any circumstances at Sundt that would require additional time to install DSI and SNCR. Accordingly, the commenter suggested that because the CAA requires BART to be installed as quickly as possible and the record shows that both DSI and SNCR can be installed in one year, EPA should set a one-year compliance deadline for both controls.

Response: We disagree with this comment. Although we agree that either control technology can be installed in as little as one year, we do not consider it reasonable to require installation of both technologies, in parallel, within a single year. The CAA and the RHR require compliance with the BART emission limit as expeditiously as possible, but in no event later than five years after promulgation of the FIP.[65] The three-year time frame in our proposed rule is consistent with this requirement.

Comment: A private citizen indicated support for the proposal to end coal burning at the Sundt facility by the end of 2017 and requested that Sundt implement the requirement sooner. Specifically, the commenter recommended that TEP, the owner of the Sundt facility, use up the existing supply of coal and not purchase any additional coal. TPMEC similarly asked that TEP use up the coal it has on site and not buy any more, but proceed with the conversion. In contrast, TEP stressed that the timing of the elimination of coal is an integral part of the alternative to BART and should not be adjusted. TEP stated that because EPA may not consider a fuel switch as a control option for determining BART for a source (citing section IV.D.1.5 of the BART Guidelines), the decision whether to implement the alternative to BART is at the sole discretion of TEP. TEP added that because (1) the alternative was originally developed by TEP and (2) it clearly meets the requirements for ''better than BART,'' EPA is limited in its ability to make changes to certain aspects of TEP's approach.

TEP asserted that it will need until December 31, 2017, to burn the existing fuel on site, ensure an adequate natural gas supply, and make the operational and mechanical changes necessary to achieve the proposed NO_X emission rate. According to TEP, since the alternative to BART results in lower emissions on an annual basis, the timing for implementation is inconsequential relative to the long-term visibility goals of the RHR and should remain as originally outlined by TEP. TEP added that EPA has no obligation or authority to arbitrarily make a better-than-BART alternative even better by adjusting the timing for implementation, and therefore the timing for implementation of the alternative should not be adjusted.

Response: We have considered TEP's request to revise the compliance deadline to December 31, 2017. We agree with TEP that this deadline is reasonable, given that the alternative results in greater emission reductions than BART on a lb/MMBtu basis for NO_X, SO_2, and PM and meets the other requirements for a better-than-BART alternative under 40 CFR 51.308(e)(2) and (3). Therefore, we are setting a compliance deadline of December 31, 2017.

Comment: TEP asserted that EPA underestimates the costs of controlling NO_X and SO_2 emissions from Sundt Unit 4. TEP indicated that it hired a professional engineering and construction firm, Burns and MacDonnell (BMD), to review the cost estimates developed by EPA as part of its five-factor BART analysis and to provide new cost estimates for the installation and operation of various control technologies on Sundt Unit 4. The results of BMD's analysis are in Table 6. TEP further noted that the BART Guidelines provide for incorporation of site-specific factors or ''elements . . . that are not addressed by the Cost Control Manual,'' and stated that the most significant site-specific factors for Sundt Unit 4 have been identified by BMD in the report attached to the comments. TEP asserted that these factors should be incorporated into the final BART determination for the facility.

TABLE 6—COMPARISON OF EPA'S AND BMD'S BART ANALYSIS RESULTS

[All values are in $/ton of pollutant removed]

Control technology	EPA (proposed)	TEP	Difference (percent)
NO_X Control Technology			
Selective Non-Catalytic Reduction	$3,222	$3,637	13

[65] CAA section 169A(g)(4), 42 U.S.C. 7491(g)(4), 40 CFR 51.308(e)(1)(iv).

TABLE 6—COMPARISON OF EPA'S AND BMD'S BART ANALYSIS RESULTS—Continued

[All values are in $/ton of pollutant removed]

Control technology	EPA (proposed)	TEP	Difference (percent)
Selective Catalytic Reduction	5,176	7,874	52
SO_2 Control Technology			
Dry Sorbent Injection	1,857	3,088	66
Dry Flue Gas Desulfurization	5,090	9,359	84
Wet Flue Gas Desulfurization	5,505	8,229	50

Response: As noted in our proposed rule and TSD, we revised upwards our contractor's original control cost estimates based on certain site-specific factors noted by TEP in its letter dated May 10, 2013. We incorporated many, but not all, of the factors raised in that letter. In its comment letter on our proposed rule, TEP raised additional factors and asserted that the cost estimates for each of the control options is underestimated. In the case of SCR, dry FGD, and wet FGD, we stated in our proposed rule that we consider these control options to not be cost-effective, either in general or in relation to their anticipated visibility benefits. In the case of SNCR and DSI, even if we were to accept all of TEP's revisions included in the comment letter, we would still consider these options to be cost-effective generally and to be BART based on our consideration of costs and visibility benefits.

Comment: NPS commented that that although EPA has not stated the reasonable level of cost-effectiveness, it assumes that the Agency typically uses $5,000/ton and 0.5 deciviews (dv) as thresholds. Yet, NPS has seen higher cost-effectiveness thresholds from EPA and other states. While NPS commends EPA for its presentation of cumulative visibility impacts and cumulative visibility benefits of reducing emissions, NPS also requested that EPA work with NPS to develop a consistent and transparent method to relate cost to visibility improvement.

Response: As noted in responses to other comments, we have not established specific thresholds for the cost and visibility factors for BART. NPS is therefore correct to note that BART determinations made by EPA may not precisely align along a specific set of $/ton or deciview improvement values. Further, even where the costs of compliance and expected degree of visibility improvement are similar at two different sources, consideration of other statutory factors may result in different outcomes.[66] With regard to determinations made by state agencies, we note that the RHR provides states with significant discretion in considering and weighing the five BART factors, so long as the factors are appropriately evaluated and the state's determination is supported by reasoned explanations for adopting the technology-based limits selected as BART. As a result, while a direct comparison of $/ton and deciview improvement values associated with BART determinations from multiple state agencies and EPA is informative and should carry weight in the ultimate decision, such comparisons are not outcome determinative.

Comment: NPS indicated that it has collected and reviewed close to 100 BART determinations for EGUs and has found that the average cost per deciview for NO_X reductions at EGUs is $14 million and the maximum cost per deciview is $34 million based on the Class I area with highest visibility improvement. NPS asserted that the $14 million figure is a good indication of the value states have placed upon reducing NO_X for visibility purposes.

Response: We agree with NPS that cost per deciview improvement is informative as a cost-effectiveness metric, including comparing the effect of controls on sources located in different parts of the country. We provided calculations of this metric in our proposal for this action. However, consistent with the BART Guidelines,[67] we have relied more heavily on cost-effectiveness calculated as cost per pollutant ton reduced and related visibility improvements in deciviews (both at individual areas and as a cumulative sum over all affected areas) as opposed to the cost per deciview metric.

Comment: NPS expressed support for EPA's inclusion of the cumulative visibility impacts and improvements associated with the control scenarios that were considered, noting that the EGUs evaluated are unusual because they impact from ten to 15 Class I areas within 300 kilometers (km).

Response: We agree with NPS that it is important to account for visibility impacts at multiple Class I areas, given that the goal of the visibility program is to remedy visibility impairment at all Class I areas.[68] The cumulative sum, while not the only means of analyzing benefits across multiple Class I areas, is an easily understood and objective method of weighing cumulative visibility improvement, and is useful as part of the overall BART determination.

Comment: TEP stated that EPA should adopt version 6.42 of CALPUFF as the approved regulatory version for modeling regional haze, since this version corrects deficiencies in the chemistry and the dispersion functions of CALPUFF version 5.8. TEP indicated that several studies conducted over the last few years demonstrate that the deficiencies in version 5.8 result in over-estimation of the visibility impacts of NO_X emissions in Class I areas. This causes erroneous over-estimation of the visibility improvements from proposed BART controls leading to biased cost-benefit values.

Response: We disagree with TEP for two reasons. First, CALPUFF 5.8 is approved as a regulatory model for use by EPA in regional haze determinations. CALPUFF version 5.8 has been thoroughly tested and evaluated, and has been shown to perform consistently with the initial 2003 version in the analytical situations for which CALPUFF has been approved. CALPUFF 6.42 is not an approved regulatory model because CALPUFF 6.42 has not yet undergone adequate review. We relied on version 5.8 of

[66] We also note that it is unusual for controls at two different sources to have similar visibility benefits across all affected Class I areas.

[67] See e.g. 70 FR 39167 (''For purposes of air pollutant analysis, 'effectiveness' is measured in terms of tons of pollutant emissions removed, and 'cost' is measured in terms of annualized control costs.'')

[68] CAA section 169A(a)(1).

CALPUFF because it is the EPA-approved version in accordance with the Guideline on Air Quality Models (''GAQM'', 40 CFR part 51, Appendix W, section 6.2.1.e). We updated the specific version to be used for regulatory purposes on June 29, 2007, including minor revisions as of that date. Second, EPA took into account limitations with Version 5.8 when it suggested use of the 98th percentile day versus the maximum day.[69]

Comment: TEP commented that the background ammonia concentration used in visibility modeling is critical because ammonia is a precursor to particulate ammonium nitrate. EPA's use of 1.0 parts per billion (ppb) for ammonia background concentration for all months of the year will tend to overestimate the visibility benefits associated with reductions of NO_X, particularly in the winter months. TEP noted that monthly ammonia measurement data from the IMPROVE monitoring network site in southern Arizona (Chiricahua) indicate that ammonia concentrations below 1.0 ppb (e.g., 0.5 ppb) are present at this site during the winter months. TEP asserted that use of those values will more accurately predict the visibility improvements expected from the reductions in NO_X emissions. Although TEP did not perform any new modeling for comparison to EPA's results in the proposal, TEP sent a letter to EPA in May 2013 that provided clarification regarding certain modeling parameters and the results of modeling performed by TEP's contractor (AECOM). According to TEP, the modeling performed by AECOM included a BART control scenario involving SNCR and DSI, similar to EPA's proposed BART determination for Sundt Unit 4. The results of AECOM's modeling was a maximum visibility improvement of 0.16 dv at Saguaro National Park East compared to the baseline case. The TEP noted that EPA's modeling representing the same control configuration (SNCR and DSI) reported a maximum visibility improvement of 0.49 dv. TEP acknowledged that these differences in modeling results have little practical effect, as EPA has proposed that its results support a BART determination involving application of SNCR and DSI on Sundt Unit 4, and TEP does not dispute that overall finding. However, should EPA find a need to do additional modeling to support its final BART determination for Sundt Unit 4, TEP recommended that EPA incorporate the modeling improvements suggested in TEP's letter of May 10, 2013.

Response: We disagree that the 1.0 ppb ammonia background we assumed for CALPUFF modeling is too high. It is consistent with EPA guidance given that some ammonia measurements are higher than 1.0 ppb, and the available ammonia data is variable over the areas included in the visibility modeling. The uncertainty over appropriate ammonia values leaves us without a reasonable basis for choosing a different constant value, or a more complex monthly varying scheme as recommended by the commenter. Ambient ammonia measurements for use as input to modeling are scarce, and measurements that include it in the form of ammonium still scarcer. In the absence of compelling ammonia background estimates, the EPA Interagency Work Group on Air Quality Modeling (IWAQM) Phase 2 guidance recommends the use of a 1.0 ppb ammonia background for arid lands, which includes Arizona.[70] This is the only guidance available on this issue. It is worth noting that there are measurements of gaseous ammonia (NH_3) that by themselves are close to or greater than 1.0 ppb, even in winter.[71] Therefore, we consider the 1.0 ppb ammonia background that we used to be appropriate for this action. Finally, we agree with the commenter that the recommended modeling changes would have little practical effect on the BART determination for Sundt Unit 4.

B. Nelson Lime Plant Kilns 1 and 2

1. Subject to BART Determination

Comment: ADEQ asserted that EPA improperly disapproved ADEQ's finding that Nelson Lime Plant is not subject to BART. ADEQ argued that ADEQ's use of a three-year average 98th percentile value ''appropriately recognizes the highly variable visibility conditions that prevail in western states due to periodic wildfires that can result in short-term spikes in visibility impairment'' and is consistent with how EPA determines compliance with certain NAAQS.

Response: These comments largely pertain to EPA's partial disapproval of the Arizona RH SIP and are therefore untimely, as EPA has already taken final action on the SIP.[72] To the extent that the comments dispute EPA's proposed determination that the Nelson Lime Plant is subject to BART under the FIP, we disagree with the substance of their argument. The BART Guidelines recommend use of the 98th percentile modeled visibility impact across multiple years of modeling in order to identify sources that cause or contribute to visibility impairment in a Class I area.[73] There are at least three different ways to determine the 98th percentile impact across three years of modeling: The maximum 8th high in any one year, the 22nd high impact over all three years, or the three-year average of the 8th high impacts from each year. Of these three methods, the three-year average is the least conservative way of determining the 98th percentile impact. Depending on the yearly distribution of the results, the most conservative 98th percentile impact may come from the maximum 8th highest value for each of the three years or the 22nd highest value for all years merged. While the BART Guidelines do not specify which value to use, given that the subject-to-BART determination is a screening test, EPA's position is that a more conservative approach, i.e., the 22nd high of three merged years or the maximum 8th high of any one year, is more appropriate for this screening test. The FLMs also recommend a more conservative approach and have noted that other states have used such an approach.[74]

We also do not agree with ADEQ that a three-year average approach ''appropriately recognizes the highly variable visibility conditions that prevail in western states due to periodic wildfires that can result in short-term spikes in visibility impairment.'' The visibility impacts of individual sources, including the Nelson Lime Plant, are determined by calculating the change in deciviews caused by the source compared to natural visibility conditions.[75] While natural conditions could include short-term spikes from wildfires, the effect of such a spike in the background level of pollution is to decrease the relative deciview impact of

[69] Memorandum in docket, ''Full Technical Response to Modeling Comments for June 2014 Final Arizona Regional Haze FIP (Phase III),'' Colleen McKaughan and Scott Bohning, EPA, June 16, 2014.

[70] Interagency Work Group on Air Quality Modeling (IWAQM) Phase 2 Summary Report And Recommendations For Modeling Long Range Transport Impacts (EPA–454/R–98–019), EPA OAQPS, December 1998, *http://www.epa.gov/scram001/7thconf/calpuff/phase2.pdf.*

[71] Memorandum in docket, ''Full Technical Response to Modeling Comments for June 2014 Final Arizona Regional Haze FIP (Phase III),'' Colleen McKaughan and Scott Bohning, EPA, June 16, 2014.

[72] 78 FR 46142.

[73] 40 CFR part 51, appendix Y, section III.A.3.

[74] Federal Land Managers' Air Quality Related Values Work Group (FLAG) Phase I Report—Revised (2010) (FLAG 2010) at 23; National Park Service Comments on EPA Review of Arizona Department of Environmental Quality (ADEQ) Determinations of Best Available Retrofit Technology (BART) at 2–3, and Reasonable Progress (RP) March 6, 2013.

[75] 40 CFR part 51, appendix Y, section III.A.3.

a given source.[76] Thus, the possibility of short-term spikes from wildfires would, if anything, argue for a more conservative approach to evaluate an individual source's contribution. Moreover, we do not agree that the use of a three-year average is appropriate here simply because certain NAAQS use a three-year averaging period. Thus, consistent with the FLMs' recommendation and with the approach used by EPA and other states for making subject-to-BART determinations, we find that use of the 98th percentile impact of any one year is appropriate for making subject-to-BART determinations for purposes of this action.

With regard to the modeling performed for the Nelson Lime Plant, ADEQ's comments refer to three different modeling analyses: (1) The initial modeling performed by LNA; (2) the refined modeling analysis performed by LNA using the revised IMPROVE equation; and (3) an additional analysis referred to by LNA in its comments on the Phase 2 proposal. ADEQ included the results of the first two analyses in the Arizona RH SIP. Both sets of results showed that for a single year, 2003, the Nelson plant's 8th high visibility impact exceeded 0.5 dv.[77] Under EPA's interpretation of the 0.5 dv threshold, this makes the facility subject to BART. The complete results of the third analysis performed by LNA were not submitted to EPA.[78] However, more recent modeling performed by LNA shows that the 98th percentile impact of the facility exceeds 0.5 dv in each of the three years modeled.[79] Thus, even under the three-year averaging approach preferred by the State, the Nelson Lime Plant is subject to BART, according to the most recent modeling performed by the facility's owner. As explained above, under EPA's interpretation of the 0.5 dv threshold, the Nelson Lime Plant is subject to BART based on prior modeling. Therefore, for the reasons set out in our Phase 2 proposed and final rulemakings and in this response, we are finalizing our determination that the Nelson Lime Plant is subject to BART.

2. BART Analysis and Determination for NO_X

Comment: NPS indicated that it agrees with EPA that visibility improvements expected as a result of applying SNCR support this technology as BART for NO_X.

Response: We agree with NPS, and acknowledge its support on this issue.

Comment: ADEQ asserted that the three-year compliance time provided in the rule does not provide enough time to retrofit SNCR on Kilns 1 and 2 because of the difficulty of installing such controls. In contrast, Earthjustice argued that EPA should set a one-year compliance deadline for the installation of SNCR at the plant. According to Earthjustice, EPA recognized in the proposal that SNCR can be installed in one year, but speculated without any support that it might take longer at the Nelson Lime Plant because of a ''lack of information regarding SNCR installation schedules on lime kilns.'' The commenter stated that allowing an extra two years without any supporting record violates the CAA's requirement that BART be installed as expeditiously as practicable.

Response: We disagree with ADEQ's assertion that a three-year compliance schedule is too short and with Earthjustice's assertion that it is too long. ADEQ has not provided any support for its assertion that three years is an insufficient period of time for installation, nor has the facility's owner made such an assertion. Regarding Earthjustice's contention that a shorter deadline is required, we note that the examples cited are for SNCR installations on cement kilns. There are multiple operational and design differences between cement and lime production.[80] Cement and lime production processes are sufficiently different that it is not appropriate to assume that SNCR installation times for cement kilns are directly transferable to the application of SNCR on lime kilns. To our knowledge, SNCR has never been installed on a lime kiln. Given that this control technology will be retrofitted to a new source category for the first time, it is not unreasonable to expect unforeseen challenges and delays. EPA's timeline is conservative and takes into account this possibility. Therefore, we find that a requirement to install SNCR within three years is consistent with the provisions of the CAA and the RHR requiring compliance with BART emission limits as expeditiously as practicable.

Comment: Earthjustice agreed that SNCR is a technically feasible control technology at the Nelson Lime Plant, but disagreed that the control efficiency for SNCR should be limited to 50 percent. Earthjustice stated that EPA's analysis must include the most stringent emissions reductions possible with SNCR (citing the BART Guidelines), and asserted that SNCRs can achieve control efficiencies significantly higher than 50 percent for the reasons discussed by Earthjustice in relation to the Clarkdale and Rillito cement plants. Earthjustice added that higher NO_X reductions are especially appropriate at Nelson Lime Plant given the facility's high baseline NO_X emissions. Earthjustice also noted that EPA provided no support in the record for the CEMS emissions data used in the development of the NO_X emissions baseline.

Response: We disagree with this comment. The information provided by Earthjustice consists of examples of SNCR on cement kilns. There are substantial differences between cement kilns and lime kilns that do not allow for direct comparisons of technical feasibility or control effectiveness. As noted previously, neither we nor the commenter were able to identify an instance of a lime kiln operating with SNCR in the United States. In addition, Earthjustice has not provided any information supporting an SNCR control efficiency more stringent than 50 percent on a lime kiln.

LNA has provided a summary of CEMS emission data, but considers it CBI since it also includes lime production data. We have included a summary of the lb/ton values from the testing period in our docket for the final rule because the BART limit is established in terms of lb/ton.[81] We have not included the mass emission rates from the testing period, since including both the lb/hour and lb/ton data in the docket would allow for the back-calculation of the lime production data.

3. BART Analysis and Determination for SO_2

Comment: Earthjustice disagreed with EPA's rejection of DSI technology based on cost considerations, and with EPA's BART reduction approach that relies on a change in fuels. Earthjustice disagreed with what it considers EPA's uncritical agreement with the company (i.e., DSI at 40 percent reduction) and asserted that, given the almost 4,000 tpy of SO_2

[76] See 70 FR at 39124 (''as a Class I area becomes more polluted, any individual source's contribution to changes in impairment becomes geometrically less'').

[77] Arizona Regional Haze SIP at 152–53, Table 10.9 and Table 10.10.

[78] See 78 FR at 46154.

[79] BART Five Factor Analysis, Lhoist North America Nelson Lime Plant; Prepared by Trinity Consultants in conjunction with Lhoist North America of Arizona, Inc. (Public version dated September 27, 2013), Table 4–7. As explained in our proposal, these results are conservative (i.e., tending to overestimate rather than underestimate the impacts), but appropriate for purposes of a subject-to-BART determination.

[80] ''Comments on Draft NO_X Control Measure Summary for Lime Kilns'', National Lime Association, March 30, 2006; AP–42, Section 11.6, Portland Cement Manufacturing; AP–42, Section 11.17, Lime Manufacturing.

[81] Non CBI—Summary of LNA Nelson March, May and June 2013 CEMS Testing.xlsx.

emitted from the two kilns, EPA's determination of the most stringent control efficiencies achievable should have been more thorough and technically grounded. Earthjustice asserted that a DSI can be optimized and can achieve far greater than 40 percent reduction, as the company's own tests show (i.e., short-term efficiencies ranging from 17 to 84 percent). Earthjustice also asserted that even with what it considers a flawed analysis, the calculated cost-effectiveness value of about $4,000/ton reduced is well within acceptable ranges. As a result, Earthjustice disagreed with the weight that EPA gave to the incremental cost-effectiveness values and urged EPA to reconsider its SO_2 BART determination for the Nelson Lime Plant in the final rule.

By contrast, NPS said that it supports EPA's conclusion, noting that it is most important to reduce process emissions before adding expensive emissions controls. NPS indicated support for EPA's decision because it generally favors moving toward cleaner fuels. After changing the fuel at the plant, however, NPS noted that it may be appropriate to revisit requiring emissions controls at that time.

Response: We acknowledge NPS's support on this issue. We disagree with Earthjustice that a more stringent DSI control efficiency is appropriate. Although the commenter notes that site-specific test data suggest short-term control efficiencies as high as 84 percent, there is no evidence that the upper range of short-term control efficiencies is sustainable over longer periods. As a result, when calculating annual emissions reductions in tpy, which is performed on an annual average basis, we do not consider it appropriate to use a control efficiency achieved over a short-term period because it might not achievable over a long-term annual average. Although Earthjustice asserted that the determination of a DSI control efficiency in our proposed rule should be more thorough and technically grounded, it has not provided any information regarding how, specifically, we should revise our analysis or that supports a more stringent control efficiency.

Furthermore, as explained in more detail in a response to a comment from LNA below, the total cost figures in our proposed rule inadvertently omitted annual indirect costs. Correcting this error results in approximate average and incremental cost-effectiveness values of $4,800/ton and $10,200/ton for Kiln 1 and $4,500/ton and $9,500/ton for Kiln 2.[82] The largest incremental visibility benefit of DSI relative to the visibility benefit of the proposed fuel mixture change at a single Class I area is 0.11 dv at Grand Canyon National Park.[83] We do not consider this level of incremental cost to be warranted by the incremental visibility benefit of DSI relative to the fuel mixture change. However, additional controls for the Nelson Lime Plant, such as DSI, should be considered for purposes of ensuring reasonable progress in future planning periods.

Comment: LNA determined that compliance with the SO_2 emission limits within six months after the effective date of the final rule in the **Federal Register**, likely in July 2014, is not feasible. Therefore, the proposed six-month compliance window is unreasonable. Compliance with the SO_2 emission limits is based on a two-step process: (1) Use of a CEMS to determine actual SO_2 emissions from each kiln; and (2) use of daily production tonnage. LNA estimated that an 18-month period is a more reasonable compliance timeframe for a system that supports both NO_X and SO_2 CEMS as well as new weigh scales on lime storage silo transfer belts.

Response: We agree that a six-month time period is an insufficient amount of time for the design, installation, and optimization of an SO_2 CEMS in this case. In other cases in which compliance with a BART limit does not involve construction of add-on controls, but does involve installation of CEMS, we have provided a twelve-month window for compliance.[84] In this case, taking into account that multiple CEMS (NO_X and SO_2) will need to be installed, and the fact that the facility does not currently operate with CEMS, may not have existing systems or infrastructure in place, and is replacing lime weigh scales, we consider an 18-month compliance time frame to be as expeditious as practicable. Therefore, we are revising the compliance deadline for SO_2 at Nelson Lime Plant to eighteen months from the effective date for the final rule in the **Federal Register**.

Comment: LNA stated that in its BART analysis submitted to EPA, the fuel mixture control option was based upon a maximum of 6.5 percent ash content in the proposed fuel mixture. LNA asserted that it did not choose this value arbitrarily, but based the value on operational knowledge and on information provided by the manufacturer of the kilns, Kennedy Van Saun (KVS).

Response: As noted in the proposed rule, we used a fuel mixture consistent with a maximum 6.5 percent ash content in the SO_2 BART analysis. We have not received any other comments regarding this issue, and the final SO_2 limits finalized in today's rule reflect this maximum ash content.

Comment: LNA asserted that EPA's estimate of the costs for DSI is unrealistic because EPA did not use site-specific input values. In addition, LNA said that there are errors in EPA's cost calculations. LNA noted various issues with EPA's cost analysis for DSI and asserted that the value of $4,200/ton of SO_2 removed is too low.

Response: We agree that our cost calculations contain an error in the ''cost summary'' tab, which is also reflected in the TSD and in the **Federal Register** preamble to our proposed rule. The total annual cost for DSI should represent the sum of annual direct and annual indirect costs, but did not include the annual indirect cost. We corrected this error in a new version of the spreadsheet for today's final rule.[85] As a result, the average cost-effectiveness values for DSI on kilns 1 and 2 increase to about $4,800/ton and $4,500/ton (from $4,174/ton and $4,085/ton, respectively). The incremental cost-effectiveness values of DSI, relative to the fuel mixture change, are about $10,200/ton and $9,500/ton (from $8,803/ton and $8,576/ton, respectively). As noted in the proposed rule, we did not consider DSI to be cost-effective on an incremental basis relative to the fuel mixture change, given the relatively small visibility benefits expected from DSI (0.10 dv at the most improved class I area and 0.29 dv cumulative). Therefore, we do not consider DSI to be cost-effective, relative to the fuel mixture change, based on these revised and even higher dollar/ton values.

LNA provided EPA with a detailed version of DSI cost calculations that was designated as CBI along with a public version with most of the calculations redacted. Because we are generally prohibited from disclosing CBI, we relied on the publicly available information to develop a separate set of calculations for the proposed rule. While there are several elements of our cost estimates that differ from LNA's CBI-protected cost calculations, these differences are immaterial in light of our finding that DSI is not a cost-effective control option relative to the fuel

[82] ''LNA Nelson Control Costs (revised for Final Rule).xlsx.''

[83] See 79 FR 9341, Table 26.

[84] 77 FR 72578. The Cholla Power Plant SO_2 BART limit required installation of inlet CEMS, with a twelve-month compliance deadline.

[85] ''LNA Nelson Control Costs (revised for Final Rule).xlsx''.

mixture change. Therefore, we have not further revised our cost analysis for DSI based on LNA's comments because the changes suggested by LNA would not alter our determination that DSI is not cost-effective for either kiln on an incremental basis.

4. BART Analysis and Determination for PM_{10}

Comment: ADEQ expressed support for EPA's determination that the existing baghouse at the Nelson Lime Plant is BART for PM_{10}.

Response: We acknowledge ADEQ's support on this issue.

5. Other Comments

Comment: LNA asserted that EPA's BART proposal does not provide for differing emission rates during startup, shutdown, and malfunction (SSM), and stated that EPA should reconsider this decision that is not supported by the available information. The CEMS data for NO_X and SO_2 that LNA submitted in its BART analysis is based on periods of steady-state operation that does not include periods of startup and shutdown. Since the CEMS data do not include these emissions, LNA did not consider it appropriate for the proposed limits to include emissions from startup and shutdown. LNA proposed that the rolling 30-day limits in the proposed rule should apply only during periods of normal operation, and proposed establishing separate emission limits during periods of startup and shutdown. LNA provided emissions data for each of the various types of startup and shutdown events.

Response: We agree that the emission limits in the proposed rule did not account for emissions from periods of startup and shutdown and we agree that the emission limits should include such periods. Because Section 302(k) of the CAA requires emission limits such as BART to be continuous,[86] BART emission limits must apply at all times, including during periods of startup, shutdown, and malfunction. We therefore consider it appropriate to revise the proposed emission limits for NO_X and SO_2 to account for emissions from periods of startup and shutdown. In order to revise the emission limits to appropriately account for startup and shutdown emissions, we sought additional information from LNA following the close of the public comment period.[87] In response, LNA suggested retaining the rolling 30-day limits that would apply at all times, but revising them upward to accommodate startup and shutdown emissions.[88] Following further discussions between EPA and LNA,[89] LNA proposed revising the rolling 30-day limit to an annual average limit that would apply at all times.[90] LNA also proposed establishing short-term ton/day limits for the Kilns, which would correspond to the short-term 24-hour average emission rates used in the visibility modeling.[91]

Based on our evaluation of the additional information provided by LNA, we are making the following revisions to the proposed emission limits. First, we are revising the lb/ton limits from a rolling 30-day basis to a rolling 12-month basis. As described in LNA's comments, periods of startup can exhibit substantial emissions, but with little to no lime production. While these startup emissions are not higher than those observed during normal operation on a simple mass basis (e.g., lb/hour, or ton/day), the fact that there is no production associated with these emissions complicates their inclusion when determining compliance with a lb/ton limit. As a result, the particular day(s) during which a startup event occurs will appear as a short-term spike in the kiln's emission rate (lb/ton). When combined with the preceding 29 days of emission data, this emission spike has the effect of driving the rolling 30-day emission rate (lb/ton) upwards. It may then be necessary for the unit to operate at a much lower rate of emissions over the next 29 days in order to ensure compliance with the 30-day limit, which may not be technically feasible. By establishing the limit on a rolling 12-month basis, such short-term spikes are averaged with data values from over an entire year, making its impact on the rolling emission rate less pronounced.

Second, in order to ensure that performance of the SNCR system installed at the Nelson Lime Plant is optimized, we are including in the final rule a series of control technology demonstration requirements. In particular, LNA is required to prepare and submit to EPA: (1) A design report describing the design of the ammonia injection system to be installed as part of the SNCR system; (2) data collected during a baseline period; (3) an optimization protocol; (4) data collected during an optimization period; (5) an optimization report establishing optimized operating parameters; and (6) a demonstration report including data collected during a demonstration period. While this type of control technology demonstration is not typically required as part of a regional haze plan, we consider it to be appropriate here, given the minimal data available about the performance of SNCR at lime kilns. Based upon the data collected during this process, EPA may revise the rolling 12-month average for the NO_X emission limit in a future notice-and-comment rulemaking action.

Third, we are establishing short-term 24-hour average emission limits (ton/day) consistent with the emission rate used in the visibility modeling for each respective control option. As noted above, revising the averaging period to an annual basis minimizes the effect of short-term spikes in emissions over a greater data set. In effect, this allows the Nelson Plant greater short-term emissions variability while still demonstrating compliance with the BART limit. To ensure that this variability does not interfere with the modeled visibility benefit, which is based upon reductions from the highest 24-hour average emission rate, we are establishing short-term ton/day emission limits. These limits are combined limits that apply across both Kiln 1 and 2, on a rolling 30-kiln operating day basis. We are finalizing a combined Kilns 1 and 2 NO_X limit of 3.20 tons/day and SO_2 limit of 10.10 tons/day.

C. Comments on the Hayden Smelter

1. General Comments

Comment: ASARCO agreed with the BART Guidelines ''that BART is not 'to redesign the source,' '' and stated this understanding is inherent in Congress' denomination of the technology as ''best available retrofit technology.''

Response: We agree that BART does not require redesign of the source.

Comment: ASARCO noted that the BART Guidelines are not ''mandatory'' as applied to the Hayden Smelter, and that EPA must depart from them if presented with sound technical justification.

Response: We agree that the BART Guidelines are not binding with respect to the Hayden Smelter, but note that the BART Guidelines serve as persuasive guidance for all BART sources.

Comment: ASARCO stated that, as further changes to air pollution controls at the Hayden Smelter will be required to demonstrate attainment of the 1-hour SO_2 NAAQS, ASARCO supports EPA's proposal to promulgate ''a performance standard as BART rather than

[86] 42 U.S.C. 7602(k).

[87] Phone call between Colleen McKaughan, EPA, and Ed Barry, LNA, on April 10, 2014.

[88] Letter from Ed Barry, LNA, to Colleen McKaughan, EPA (April 29, 2014).

[89] Conference calls between EPA and LNA, May 2 and 7, 2014.

[90] Letter from Ed Barry, LNA, to Colleen McKaughan, EPA (May 9, 2014).

[91] Id.

prescribing a particular method of control,'' if EPA determines additional controls are needed. ASARCO stated that reconfiguration of the smelter might be required to attain the 1-hour SO_2 NAAQS in the form of a ''converter retrofit project'' or CRP. ASARCO argued that while detailed engineering of the CRP is substantially completed, details must be worked out before the final project can be permitted. Thus, ASARCO concluded that it is critical for EPA not to finalize a BART FIP for SO_2 that interferes with the Hayden area's attainment of the SO_2 NAAQS. Similarly, ADEQ urged EPA to reevaluate its SO_2 BART decision for the Hayden Smelter and align it with controls that ASARCO has to implement in order to comply with the 1-hour SO_2 NAAQS.

Response: Following the close of the public comment period, ASARCO provided us with additional information concerning the CRP, including a description of plans to replace the BART-eligible Peirce-Smith converters with new converters. If the BART-eligible converters are replaced prior to the BART compliance deadline, then the BART requirements would no longer apply. Accordingly, there is no basis to expect that the RH FIP will interfere with ASARCO's ability to ensure attainment of the SO_2 NAAQS. We also agree that a performance standard rather than a particular method of control is appropriate for BART. As explained further below and in a revised BART determination included in the docket for this final rule, ASARCO has demonstrated that separate levels of control are necessary for the primary and secondary capture systems. Therefore, we are setting the level of control to 99.8 percent (equivalent to the existing double contact acid plant) for the primary capture system and 98.5 percent for the secondary capture system. These limits only apply if ASARCO does not replace the BART-eligible converters prior to the BART compliance deadline.

2. BART Analysis and Determination for SO_2 From Converters

Comment: ADEQ said that EPA's disapproval of ADEQ's SO_2 BART determination for the Miami and Hayden Smelters is unsupported. Similarly, AMA requested that EPA reconsider its decision to disapprove parts of the Arizona RH SIP because the State should make a BART determination for the smelters according to the CAA.

Response: These comments concern EPA's partial disapproval of the Arizona RH SIP and are therefore untimely, as EPA has already taken final action on the SIP.[92] The commenters have provided no legal basis for EPA to reconsider that action.

Comment: NPS expressed support for EPA's decisions based on the expected substantial visibility improvements associated with installing a new acid plant as BART for SO_2 at the Hayden Smelter. In particular, NPS agreed with EPA's decisions to protect many Class I areas.

Response: We appreciate NPS's support and note that the BART level of control for the converters is a performance standard and not any particular method of control.

Comment: ASARCO, ADEQ, and AMA expressed doubt over the technical feasibility of a double contact acid plant for controlling secondary ventilation gases. ASARCO asserted that acid plants are not an ''applicable'' technology, and therefore, not an ''available'' technology for controlling secondary ventilation gases because of low concentrations of SO_2 and high variability in the exhaust gas stream. ASARCO stated that EPA failed to evaluate the technical feasibility of double contact acid plants when applied to these low-strength gases, which is the second step of a BART analysis. ASARCO argued that, had EPA conducted an adequate analysis, it would have concluded that double contact acid plants are not an ''applicable'' technology because they do not have a ''practical potential for application'' to the secondary ventilation gases and hence are not an ''available'' technology. ADEQ and AMA echoed ASARCO's comments, urging EPA to look at the information submitted by ASARCO and reconsider its proposal.

Response: We do not agree that a double contact acid plant is technically infeasible for the secondary gas stream at the Hayden Smelter. As explained in the BART Guidelines, control technologies are technically feasible if either (1) they have been installed and operated successfully for the type of source under review under similar conditions, or (2) the technology could be applied to the source under review.[93] The BART Guidelines further explain that the regulatory authority must exercise technical judgment in determining whether a control alternative is applicable to the source type under consideration. In most cases, a commercially available control option is presumed applicable if it has been used on the same or a similar source type. Absent a showing of this type, one must evaluate technical feasibility by examining the physical and chemical characteristics of the pollutant-bearing gas stream, and comparing them to the gas stream characteristics of the source types to which the technology had been applied previously.[94] In this instance, a double contact acid plant is already in use at the Hayden Smelter. Therefore, it is presumed to be an applicable technology, absent a demonstration that specific circumstances preclude its application to a particular emission unit. Generally, such a demonstration involves an evaluation of the characteristics of the pollutant-bearing gas stream and the capabilities of the technology.[95] No such demonstration of technical infeasibility has been made here. On the contrary, the record establishes that a double contact acid plant is feasible for the secondary gas stream at the Hayden Smelter.

In particular, while the secondary gas stream has a lower SO_2 concentration and higher volumetric flow rate than the primary gas stream, these differences do not render a double contact acid plant technically infeasible. Indeed, EPA concluded more than 30 years ago that ''[i]t is technically feasible . . . to design acid plants that will operate auto-thermally on feed streams that exhibit SO_2 concentrations below the 3.5 to 4.0 percent range.'' [96] The commenters have offered no evidence to refute this conclusion. Contrary to the commenters' suggestions, ASARCO's contractors, Gas Cleaning Technologies (GCT) and MECS,[97] have not stated that use of a double contact acid plant is technically infeasible.[98] Rather, they have indicated that use of this technology would present additional technical challenges that would make it more costly and less effective than estimated by EPA. In particular, GCT states that ''[a] more realistic 60 ppmv [parts per million by volume] outlet concentration would mean only 96 [percent] SO_2 removal efficiency by such an acid plant at ASARCO. . . . when a realistic capital cost and removal efficiency is used for the acid plant, the $/ton SO_2 removed estimate will be more than double the $872/ton

[92] 78 FR 46142.

[93] 40 CFR part 51, appendix Y, section IV.D.2.

[94] Id.

[95] See Id.

[96] 1984 NSPS Review at 4–3.

[97] This is the name of the company.

[98] See Letter from Steven Puricelli, MECS, to Matt Russell, GCT (March 5, 2014)(''MECS Letter'') (''A double acid plant could operate with this low secondary gas concentration . . .''); Letter from Matt Russell, GCT, to Jack Garrity, ASARCO (''GCT Letter'')(February 12, 2014) at 2 (''it may be technically feasible to operate an acid plant on the converter secondary gases . . .'').

SO_2 indicated by EPA.'' [99] However, as explained in the BART Guidelines, where the resolution of technical difficulties is merely a matter of increased cost, you should consider the technology to be technically feasible.[100] Therefore, in this instance, EPA considers a double contact acid plant to be a technically feasible option for control of the secondary gas stream. ASARCO's assertions regarding cost-effectiveness are addressed below.

Comment: ASARCO stated that there are deficiencies in EPA's cost analysis for an acid plant. First, ASARCO asserted that EPA cannot rely upon the cost formula from the 1984 NSPS Review for an acid plant without validating current costs and, as a result, has substantially underestimated the cost of the proposed acid plant for the secondary ventilation gases. ASARCO stated that the equation that EPA used was derived from double-contact acid plants that were processing primary ventilation gases with significantly higher SO_2 concentration (4.5 percent to 8.0 percent) and flow rates up to 140,000 standard cubic feet per minute (scfm). This compared to rates for secondary ventilation gases at 0 to1 percent SO_2 and 275,000 scfm.[101] ASARCO stated that EPA's extrapolation to lower concentrations cannot be justified because none of the data points included double-contact acid plants treating secondary ventilation gases, for which MECS gave a significantly higher cost estimate.

Second, ASARCO stated that supplemental heating of the acid plant influent gas is required, but there is no supplemental heat available to reduce heat load requirements as suggested by EPA. ASARCO noted that GCT evaluated the potential for using existing sources for heat and concluded that it ''does not expect any available heat source to be able to provide more than a small percentage of the heat required.'' ASARCO added that EPA does not appear to have accounted for the additional heat required after the interpass absorption process, nor the additional electrical energy associated with handling this larger volume of secondary ventilation gases.

Third, ASARCO stated that EPA failed to account for other costs including dehumidification, which is expensive due to equipment installation and maintenance costs as well as the energy required to run the refrigeration system. ASARCO also stated that the incoming gas stream will require added compensatory preheating of the gas stream, which is an additional energy requirement that EPA does not appear to have addressed. Finally, ASARCO stated that EPA cannot reduce the cost to control secondary ventilation gas by shifting additional gas to the primary acid plant because the existing plant does not have the capacity to take any secondary gases without converter retrofit.

Based on the foregoing, ASARCO and ADEQ asserted that EPA had underestimated the cost of a new acid plant by at least a factor of two.

Response: We do not agree that the cost estimates provided by MECS and GCT are more accurate than EPA's cost estimates because both contractors characterized their estimates as ''ballpark,'' ''approximate,'' and ''order-of-magnitude.'' [102] Nonetheless, we note that, even if our original cost estimate for an acid plant of $872/ton is increased by a factor of two, as suggested by the commenter, this would result in control costs of about $1,800/ton of SO_2. We consider $1,800/ton of SO_2 to be very cost-effective, especially in light of the large visibility benefits that are expected to result from these controls. However, based on additional information provided by ASARCO, we have revised our BART analysis in several respects, including the addition of an amine scrubber as a third control option. As explained in a revised BART analysis included in the docket for the final rule,[103] we find that an amine scrubber would result in greater emission reductions and would be even more cost-effective than an acid plant. Therefore, we are revising our BART determination to reflect use of an amine scrubber rather than an acid plant for the secondary stream.

Comment: ASARCO stated that EPA underestimated the costs of wet scrubbing. For example, ASARCO asserted that the TSD does not address the technical feasibility of applying caustic wet scrubbing to the characteristics of the secondary ventilation gases at the Hayden Smelter compared to other applications for caustic wet gas scrubbing. ASARCO asserted that these differences affect the design basis and capital and operating costs associated with caustic wet scrubbing. ASARCO further noted that EPA omitted the cost of treating or landfilling the sludge from the caustic wet scrubbers, installing and operating a booster fan, and possible stack modifications. ASARCO stated that its own estimates for treating and landfilling the sludge are more than double EPA's total annual cost estimate.

Response: In the proposed FIP, we estimated an annual cost of $972/ton to control SO_2 from the secondary gas stream using a caustic wet scrubber. This estimate is based on cost information provided by ASARCO. If we increase the sludge disposal costs to the degree that ASARCO proposes while simultaneously increasing the control efficiency from 85 to 90 percent as ASARCO suggested,[104] our estimate of annual costs range from $909/ton, if the sludge is treated as solid waste, to $1,291/ton, if all sludge is treated as hazardous waste. We consider any cost in this range to be highly cost-effective. However, as explained in our revised BART analysis, use of a wet scrubber is more expensive on a $/ton basis and would result in fewer emissions reductions than an amine scrubber. Therefore, we consider a control efficiency of 98.5 percent, achievable with an amine scrubber, to constitute BART.

Comment: ASARCO stated that EPA failed to properly consider the energy and non-air quality environmental impacts of compliance, which is the second BART factor. ASARCO asserted that the energy requirements for the proposed acid plants for the secondary ventilation gases are excessive and would require additional heat supplementation and additional electrical energy associated with handling the larger volume of secondary ventilation gases compared to primary ventilation gases. ASARCO also stated that the collateral emissions from preheating would be excessive. ASARCO provided a table using AP–42[105] for large boilers and assuming low NO_X burners, which shows that the acid plant will cause a net increase in pollutants. This increase, according to ASARCO, would be greater than the actual NO_X emissions from the BART-eligible units.

[99] GCT Letter at 2 (''A more realistic 60 ppmv outlet concentration would mean only 96% SO_2 removal efficiency by such an acid plant at ASARCO . . . when a realistic capital cost and removal efficiency is used for the acid plant, the $/ton SO_2 removed estimate will be more than double the $872/ton SO_2 indicated by EPA.'').

[100] 40 CFR part 51, appendix Y, section IV.D.2.

[101] The original comment referred to a ''0–0.1'' percent concentration for secondary ventilation gases. ASARCO Comment Letter at 9. However, this appears to be an error, as the same letter also states that ''[a]t the Hayden Smelter, the SO_2 content of secondary ventilation gas ranges from 0 to 1 [percent] SO_2 or approximately 0 to 10,000 ppm, and averages 1580 ppm.'' ASARCO Commenter Letter at 5.

[102] MECS Letter at 1; GCT Letter at 2.

[103] Revised BART Analysis for SO_2 at ASARCO Hayden—Converters 1, 3, 4, and 5 (June 2014).

[104] GCT Letter at 4.

[105] ''AP 42'' refers to EPA's Compilation of Air Pollutant Emission Factors. See *http://www.epa.gov/ttnchie1/ap42/*.

Response: We do not agree that we failed to properly consider the energy and non-air quality environmental impacts of compliance. We have weighed these impacts along with the other four BART factors in reaching a BART determination. In particular, we do not agree that the energy requirements for the proposed double contact acid plant for secondary ventilation gases are excessive. On the contrary, we consider these impacts to be reasonable given the significant emission reductions and associated visibility benefits. Finally, we expect that any new combustion equipment required to heat the secondary stream will emit well below the AP–42 levels, which were published in 1998. However, if they were to emit at the levels claimed by the commenter, these emissions would have a far lower impact on visibility than the thousands of tons of SO_2 presently emitted annually through the annular stack. In particular, the increases in the major visibility-impairing pollutants cited by the commenter (68.5 tpy of NO_X, 0.29 tpy of SO_2 and 3.7 tpy of PM) are quite modest in comparison to the projected reductions in SO_2 of about 20,000 tpy resulting from these controls.

Comment: ASARCO stated that the volume of wet scrubber sludge creates collateral environmental impacts, such as increased truck emissions, truck traffic, risks of accidents, and consumption of landfill space.

Response: Most of the impacts noted by ASARCO are either air impacts (e.g., increased truck emissions) or non-environmental impacts (e.g., risk of accidents), and therefore do not fall within the scope of ''energy and non-air quality environmental impacts.'' With regard to the consumption of landfill space, we consider this impact to be reasonable in relation to the large visibility benefits and modest costs of control. As noted above, even if we were to double the sludge disposal costs, our estimate of annualized costs would not increase significantly.

Comment: ASARCO stated that EPA has not demonstrated that its proposed SO_2 removal rate (52.145(l)(4)(i)) is achievable in practice by the existing primary acid plant. ASARCO asserted that EPA cannot use a 365-day average performance estimate as a 30-day limit because the 99.8 percent estimate is based on what the acid plant will achieve on average over the course of a year. ASARCO stated that a 30-day limit forces the existing acid plant to perform better than an annual limit even though EPA did not undertake a BART analysis to support the lower 30-day limit. Further, ASARCO stated that the proposed removal rate applies to periods that contain SSM events, which typically are not included in annual acid plant performance estimates or vendor guarantees. Therefore, ASARCO concluded that no data exists to support EPA's inclusion of SSM emissions in the proposed limit. ADEQ also suggested that EPA may have misinterpreted information provided by ASARCO concerning the performance of the primary acid plant, converting the annual design value to a rolling 30-day limit.

Response: We agree that the control efficiency was determined using annual production and emissions data. Based on this information, we have modified the final determination so that the limit on the double contact acid plant is a rolling 365-day average rather than a rolling 30-day average. This revision also addresses ASARCO's concern regarding SSM emissions because the 99.81 percent control efficiency estimate provided by ASARCO includes all emissions going to the acid plant and therefore accounts for startup and shutdown emissions.[106] Furthermore, excess emissions from malfunctions are, by definition, unforeseeable and therefore cannot be accounted for within an emission limit.

Comment: ASARCO stated that EPA's proposed method for the determination of compliance with the proposed limit is subject to significant error. Specifically, ASARCO stated that the measurement error in its tailstack CEMS is ''sufficient to vary calculated results a full 0.1 [percent]'' and ''[t]he measurement error on the strong gas analyzer is nearly as great as the span of the tail gas CEMS.'' ASARCO added that its measurements of sulfuric acid production also ''lack the precision and accuracy needed for continuous demonstration of compliance.'' AMA also asserted that it is not technically feasible to continuously measure SO_2 in order to demonstrate compliance with the requirement contemplated by EPA.

Response: We do not agree with these comments. Because compliance with the emission limit is determined on a cumulative mass basis over a rolling 365-day period, it is measurable as a practical matter. The difference in scale between the inlet and outlet CEMS is not relevant because control efficiencies are calculated based on the ratio of the data from the two CEMS, not the difference.

For example, consider a situation where 1,000 pounds of SO_2 enters the acid plant and is controlled by 99.8 percent, resulting in emissions of 2 pounds of SO_2. The inlet measurement could vary by 10 percent (i.e., the CEMS could read anything from 900 to 1,100 pounds, which is +/- 100 pounds) without affecting the compliance measurement, which is rounded to the tenths place. The following sample calculations with varying inlet CEMS readings demonstrate this concept:

The control efficiency is calculated using the following equation:

(1 − (SO_2-out/SO_2-in)) * 100 percent = Control efficiency as a percent

If the inlet CEMS provides a true measurement, the control efficiency would be:

(1 − (2/1000)) * 100 percent = 99.8 percent

If the inlet CEMS reads 100 pounds low, the control efficiency would be:

(1 − (2/900)) * 100 percent = 99.778 percent, which rounds to 99.8 percent

If the inlet CEMS reads 100 pounds high, the control efficiency would be:

(1 − (2/1100)) * 100 percent = 99.818 percent, which rounds to 99.8 percent

Therefore, even if the inlet measurement varied by 100 pounds (10 percent), it would not affect the control efficiency. Thus, the difference in scale between the acid plant inlet CEMS and tailstack CEMS is not relevant. Finally, we note that, while the FIP provides for an alternative compliance demonstration using acid production rates, we are not requiring the use of this method. Therefore, ASARCO may use the CEMS rather than acid production rates to demonstrate compliance.

Comment: ASARCO expressed concern that EPA incorrectly characterized ASARCO as using ''limited cesium catalyst,'' and may not recognize that ASARCO has already installed cesium-promoted catalyst to the extent recommended by MECS.

Response: Our characterization of ASARCO's use of cesium catalyst as ''limited'' was not intended to suggest that additional cesium-promoted catalyst is necessary or appropriate for the existing double contact acid plant at the Hayden Smelter. Rather, we noted the ''limited'' use of cesium catalyst at the existing double contact acid plant as evidence that the 99.8 percent control efficiency achieved by the existing double contact acid plant is a reasonable estimate of the efficiency achievable at a new double contact acid plant.

Comment: ASARCO stated that the proposed limit should be adjusted to

[106] Letter from Jack Garrity, ASARCO to Thomas Webb, EPA, July 11, 2013 at 15.

reflect the realities of metallurgical acid plant operation. ASARCO added that a simpler measure, similar to the NSPS for Primary Copper Smelters' use of a limit on SO_2 in the tail gas, is likely a better solution, which would accommodate the process variation and measurement error that will be encountered. Until such a standard is developed, ASARCO asserted that the work practice standard in paragraph (l)(12) and the existing NSPS limit of 650 ppmv, six-hour average, under which the smelter already achieves substantial emission reductions, provides a workable limitation to ensure existing emission reductions are maintained.

Response: We recognize the variable nature of the process and the difficulty involved in measuring a high control efficiency. For these reasons, we are proposing a rolling 365-day average calculated on a cumulative mass basis. Furthermore, because the amount of SO_2 emitted by the converters is constantly varying, a simple concentration-based limit cannot be used to demonstrate that the process is under control.

Comment: ASARCO stated that caustic wet scrubbing of the acid plant tail gas is not cost-effective for BART.

Response: We agree that adding a wet scrubber to scrub the acid plant tail gas is not cost-effective for BART.

Comment: Earthjustice stated that its primary concern with EPA's SO_2 BART determination for the Hayden Smelter is the fate of the ''uncaptured'' or fugitive emissions which, while a large amount estimated at 1,209 tpy, are not addressed by EPA. Earthjustice indicated that EPA should require an analysis of shop ventilation using a computational fluid dynamic (CFD) model that, according to Earthjustice, is a common technique used to enhance capture of fugitive emissions in older shops. Earthjustice stated that requiring implementation of the resulting recommendations would enhance the capture system for the shop so that fugitive emissions are captured by a modified primary or secondary system, which would allow for treatment in the current/proposed emissions control systems (such as the PM controls and the acid plant).

Response: We recognize that there is uncertainty in the determination of fugitive emissions from the Hayden Smelter. Therefore, rather than specify a capture efficiency, we have established a work practice standard that requires ASARCO to design and operate a secondary capture system optimized to capture the maximum amount of process off-gas vented from each converter at all times. In order to demonstrate compliance with this requirement, ASARCO must submit a written operation and maintenance plan to EPA for approval 180 days prior to the applicable compliance date and must comply with this plan thereafter, once it is approved by EPA. Since ASARCO has performed CFD analyses on the Hayden Smelter, we would expect the company to submit such analyses for review by EPA in determining whether the secondary capture system is optimized to capture the maximum amount of process off-gas.

Comment: Earthjustice stated that EPA's decision to split emissions between the baseline primary, secondary, and uncontrolled, uncaptured streams might not be accurate, because EPA does not provide any support for these emissions levels other than noting that they are based on estimates by the company.

Response: We disagree with this comment, which refers to emissions calculations in the Arizona RH SIP and a comment letter from ASARCO regarding the SIP.[107] Our BART analysis did not rely on these emissions calculations. Rather, we relied upon emissions data reported by ASARCO to ADEQ, which we consider to be the best emissions information available for the Hayden Smelter. The data for the primary and secondary emissions is based on CEMS. While there is uncertainty inherent in any calculation of uncaptured emissions, Earthjustice has not provided any more credible emissions information or provided a mechanism for decreasing uncertainty in the quantification of uncaptured emissions. We do not have a copy of the 1994–1995 fugitive emissions study and did not rely directly on this study to estimate uncaptured emissions.

Comment: Earthjustice stated that EPA proposed to require a 99.81 percent reduction of the Hayden Smelter's SO_2 emissions from the primary and secondary capture systems apparently based on the fact that the existing plant is capable of achieving that level of control. However, Earthjustice asserted that greater control efficiencies are achievable, and that EPA must therefore revise its BART analysis to incorporate the most stringent emission control level that the technology is capable of achieving (citing the BART Guidelines). Earthjustice, citing a paper regarding the Kennecott Smelter, stated that 99.95 percent control efficiency is achievable. Based on another report by the technology vendor Cansolv, Earthjustice suggested that a 99.93 percent reduction is achievable. Earthjustice noted that the latter report also states that the CANSOLV® SO_2 Scrubbing System can achieve an outlet SO_2 concentration as low as 0.15 lb SO_2/ton acid, as opposed to EPA's proposed BART level of 2.49 lb/ton acid. Earthjustice urged EPA to increase the requirement for control at the acid plant(s) to 99.93 percent or greater.

Response: We do not agree that our proposal to require a 99.8 percent control efficiency is insufficiently stringent. The examples cited by Earthjustice are not directly comparable to the Hayden Smelter. The Kennecott Smelter uses a flash copper converting technology that produces copper on a continuous basis, unlike the Hayden Smelter's batch-process system. Replacing the batch-process converters at the Hayden Smelter with continuous converters would require a redesign of the system, which is not within the scope of BART.[108] Therefore, we do not consider the 99.95 percent control efficiency achieved at the Kennecott Smelter to be appropriate for determining BART at the Hayden Smelter.

The report on the Cansolv system provided by Earthjustice is a presentation given by Cansolv representatives at a trade show for fertilizer manufacturers. The figure of 0.15 lbs SO_2 per ton of acid produced (10 ppmv SO_2) is a low-end estimate and is lower than any of the outlet concentrations in the table of results provided by Earthjustice. The report did not provide enough information to allow us to determine whether any of the facilities listed in the table operate a process similar enough to batch process copper smelting to be directly comparable to the Hayden Smelter. However, as explained above, ASARCO's contractors have stated that, ''for this application, Cansolv has indicated that they can achieve close to 99 [percent] removal efficiency with a 20 ppmv outlet gas stream.''[109] Therefore, we consider 98.5 percent to be a reasonable estimate of the control efficiency achievable with Cansolv for treatment of the secondary stream at the Hayden Smelter.

Comment: Earthjustice stated that EPA should have considered DSI for the control of the acid plant tailstack.

Response: We disagree with this comment. DSI is commonly used to control SO_2 at combustion sources such as coal-fired power plants and

[107] See Earthjustice Comment Letter at 31, notes 53–56.

[108] 70 FR 39164 (''We do not consider BART as a requirement to redesign the source when considering available control alternatives.'')

[109] GCT Letter at 3.

incinerators. DSI requires particulate control (e.g., a baghouse or electrostatic precipitator) in order to collect the used sorbent. Thus, DSI may be a cost-effective technology when sorbent can be injected upstream of a particulate control device that either is already in service or otherwise required to meet a particulate matter limit. However, we are not aware of any facilities in any industry that use DSI downstream of an acid plant. Therefore, we do not consider it a technically feasible technology in this case.

3. BART Analysis and Determination for SO_2 From the Anode Furnaces

Comment: Earthjustice asserted that the 38 tpy of SO_2 emissions from the anode furnaces are significant, and that EPA has routinely controlled sources with this level of SO_2 emissions in many other instances. Accordingly, Earthjustice urged EPA to require DSI for SO_2 controls for the anode furnaces, which typically achieves emissions reductions in the range of 50 to 70 percent or greater depending on process conditions. Earthjustice indicated that EPA should fully evaluate this option. According to Earthjustice, EPA suggested a work practice standard requiring the use of blister copper or higher purity copper. Earthjustice stated that it is unclear how this work practice standard will help reduce emissions (because presumably the anode furnaces are currently charged with the 98 to 99 percent pure blister copper), or how it will be enforced.

Response: At the Hayden Smelter, the anode furnaces are charged only with blister copper, which is nearly 98 percent pure copper. While the estimated 38 tpy of SO_2 emissions from the anode furnaces may not be ''insignificant,'' they are undoubtedly small compared to the more than 20,000 tpy of uncaptured emissions from the converters. Moreover, while Earthjustice asserted that ''EPA has routinely controlled sources with this level of SO_2 emissions in many other instances,'' it has not provided any examples of controls on emissions of this level under the RHR. Because the potential SO_2 emissions from the anode furnaces are quite low relative to the airflow, DSI would not be cost-effective for SO_2 removal at roughly $25,000/ton.[110] We have included work practice standards and recordkeeping requirements in the FIP to assure that only blister copper is used in the anode furnace.

Comment: ASARCO stated that EPA should clarify that the requirement for ''charging'' only high quality copper does not preclude fluxes and reducing agents such as natural gas and steam. ASARCO is concerned that the proposed language in 40 CFR 52.145(l)(4)(v) could be misinterpreted to prevent the company from poling (i.e., reducing the metal in the furnace to remove oxides) or adding any final fluxing agents to achieve anode casting chemistry requirements. ASARCO explained that while the bulk of converting occurs in the converters, some final refining occurs in the anode furnaces prior to anode casting. Therefore, ASARCO must be able to ''pole'' or reduce the furnace (using natural gas and/or steam) and add flux agents to achieve final chemistries. ASARCO suggested the following revision:

> Anode furnaces #1 and #2 shall only be charged with blister copper or higher purity copper. This charging limitation does not extend to the use or addition of poling or fluxing agents necessary to achieve final casting chemistry.

Response: We are including this language in the final regulatory text because we base our cost calculations for controlling SO_2 emissions from the anode furnaces on the current use of the anode furnaces, which do not process concentrates or matte with significant sulfur content. We have modified the regulatory language explicitly to allow the use of poling and fluxing agents. We expect any SO_2 emissions resulting from the use of such agents to be *de minimis* because of the very low SO_2 content of natural gas and steam.

4. BART Analysis and Determination for NO_X

Comment: ADEQ asserted that EPA's disapproval of ADEQ's determination that the Hayden and Miami Smelters are not subject to BART for NO_X has no statutory basis, and that EPA's imposition of BART for NO_X emissions on smelters is arbitrary and capricious. ADEQ argued that it had correctly determined that the smelters are not subject to BART for NO_X because:

(1) EPA's regulations provide that a facility whose potential to emit (PTE) a particular pollutant is below a certain ''significance'' threshold—40 tpy for NO_X —is automatically not subject to BART; and

(2) the units' NO_X emissions do not cause or contribute to regional haze, because the modeled impacts for each facility's NO_X emissions are less than 0.5 dv.

ADEQ said that EPA argued that the PTE for the smelters should be calculated assuming continuous operation at maximum capacity. In ADEQ's opinion, this was inconsistent with EPA's acknowledgement of the smelters' batch process which precludes continuous operation. ADEQ further reasoned that even if the NO_X emissions from the smelters were above the 40 tpy threshold and considered significant, the emissions still would not contribute to regional haze because their impact is less than 0.5 dv from each of the facilities. The estimated visibility impacts from NO_X emissions are expected to be 0.11 dv for the Miami Smelter and 0.01 dv from the Hayden Smelter, according to ADEQ.

Response: To the extent that these comments concern EPA's partial disapproval of the Arizona RH SIP, they are untimely. EPA has already taken final action on the SIP.[111] To the extent that that comments dispute EPA's proposed determination that the copper smelters are subject-to-BART for NO_X, we disagree with their substance. Under the RHR, a BART determination is required for each ''BART-eligible *source''* in the State that emits ''*any* air pollutant'' which may cause or contribute to any impairment of visibility in any Class I area. All such sources are subject to BART.[112] Thus, EPA and states ''must look at SO_2, NO_X, and direct PM emissions'' in determining whether sources cause or contribute to visibility impairment.[113] When all of these emissions are accounted for, the Hayden Smelter has a total visibility impact greater than 0.5 dv at multiple Class I areas, and is therefore subject to BART.[114]

Once a source is determined to be subject to BART, the RHR allows for the exemption of a specific pollutant from a BART analysis only if the PTE for that pollutant is below a specified *de minimis* level, in this instance, 40 tpy for NO_X.[115] PTE is defined as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design.[116] Physical or operational limitations on emissions capacity (e.g., restrictions on hours of operation) may be taken into account, but only if those limitations are federally enforceable. 40 CFR 51.301. There are currently no federally

[110] See ''Anode Furnace—DSI Cost Calculations.'' We note that these capital costs in these calculations are based upon a much lower flowrate than that of the anode furnaces, Therefore, we consider these estimates to be very conservative (i.e., tending to underestimate rather than overestimate in this instance).

[111] 78 FR 46142.

[112] 40 CFR 51.308(e)(ii)(A).

[113] BART Guidelines, 40 CFR Part 51, appendix Y, section III.A.2.

[114] See, e.g. TSD at 68, Table III.D–4 (showing base case impact of greater than 0.5 dv at 11 Class I Areas).

[115] 40 CFR 51.308(e)(1)(ii)(C).

[116] 40 CFR 51.301.

enforceable physical or operational limitations that would limit the PTE of the BART-eligible units at either the Hayden or Miami Smelters below the NO_X de minimis threshold of 40 tpy. Therefore, we are finalizing our determination that both smelters are subject to BART for NO_X.

Comment: AMA disagreed with EPA's proposed NO_X emissions cap. AMA asserted that EPA does not have the authority to finalize the proposed cap on NO_X emissions. According to AMA, if the source has been determined to be subject to BART for a particular pollutant, EPA has, according to the CAA, the following two options: (1) Impose BART controls based on the outcome of the five-factor analysis or (2) determine that a source's emissions are *de minimis* and exempt them from the BART analysis.[117] AMA said that the NO_X emission caps are arbitrary and capricious and should not be included in the final rule.

Response: We do not agree with this comment. Regional haze SIPs and FIPs must contain ''emission limitations representing BART'' for all subject-to-BART sources.[118] In particular, either the State or EPA must establish an enforceable emission limit ''for each subject emission unit at the source'' and ''for each pollutant subject to review'' that is emitted from the source.[119] This requirement applies even where BART is determined to be an emission limit consistent with existing controls. Otherwise, emissions could increase to a level where additional controls would be warranted for BART, but no mechanism would exist to require such controls.

Comment: ASARCO commented that a traditional low-NO_X burner does not have practical application to the converters. ASARCO noted that EPA cites ''AirControlNet, Version 4.1 documentation report by E.H. Pechan and Associates, Inc.'' dated May 2006, section III, page 445, as support for its claimed 50 percent control efficiency for low-NO_X burners in the converters and/or anode furnaces. ASARCO asserted that this claim is erroneous because the report is based on NO_X SIP Call data, which did not focus on the primary metals industry and is of questionable relevance. Further, ASARCO stated that EPA would need to demonstrate that low-NO_X burner flame design and size constraints are appropriate for use in the converter and anode furnace architecture. ASARCO also stated that it is likely that low-NO_X burners cannot achieve 50 percent control at the Hayden Smelter. Therefore, EPA has underestimated the cost of control and must recalculate.

Response: ASARCO did not provide any documentation to support its claims regarding control efficiency and cost. Therefore, there is no basis in the record for EPA to revise our own estimates. In any case, any increases in the estimated cost-effectiveness of controls would not alter the ultimate outcome in this case, since we are finalizing our determination that BART for NO_X is an emission limit consistent with no additional controls.

Comment: ASARCO stated that BART does not authorize ''precautionary'' limits or other limits to ''ensure the enforceability'' of a determination that no controls are required. ASARCO also stated that EPA must increase the limit to account for any NO_X generated by EPA-mandated controls. ASARCO asserted that EPA does not cite, nor can it, any legal basis for imposing an ''unqualified limit'' where the BART analysis concludes ''no further controls.''

Response: We do not agree with this comment. RH SIPs and FIPs must contain ''emission limitations representing BART'' for all subject-to-BART sources. In particular, either the State or EPA ''must establish an enforceable emission limit for each subject emission unit at the source and for each pollutant subject to review that is emitted from the source.'' This requirement applies even where BART is determined to be an emission limit consistent with existing controls. As explained elsewhere in this notice, we are finalizing our determination that the Hayden Smelter is subject-to-BART for NO_X. Therefore, an emission limitation representing BART for NO_X is required.

We also do not agree that our proposed limit of 40 tpy effectively imposes controls. As explained in our proposal, the baseline emission rate of 50 tpy used for purposes of our BART analysis ''assumes that all of the converters are all operating simultaneously, which is not how they typically operate. Therefore, we expect actual emissions to be well below 40 tpy, which is consistent with ASARCO's own estimate.'' [120] ASARCO has not retracted or modified its prior statement that actual NO_X emissions from the Hayden Smelter are below 40 tpy. Accordingly, ASARCO should be able to meet a limit of 40 tpy without installation of any new controls. Furthermore, setting an emission limit of 40 tpy NO_X satisfies the requirements of 40 CFR 51.308(e) for NO_X and ensures that NO_X emissions from the BART-eligible units will not contribute significantly to visibility impairment in the future.

Comment: ASARCO stated that the long-term strategy does not require emission limits on the smelter, stating that NO_X emissions from the smelter contribute 0.01 dv or less to regional haze. As such, ASARCO asserted that imposing limits on the smelter is not necessary to achieve the RPGs established by Arizona and, therefore, EPA has no legal basis for imposing a 40 tpy cap.

Response: We do not agree with this comment. As noted above, the promulgation of NO_X limits for the BART-eligible units at the Hayden Smelter is required under 40 CFR 51.308(e). With regard to the requirements of the long-term strategy, in addition to the requirement cited by ASARCO, 40 CFR 51.308(d)(3)(v)(F) requires consideration of the ''enforceability of emission limitations and control measures'' (including BART emission limitations) as part of the long-term strategy.

Comment: Earthjustice asserted that EPA's analysis and conclusions regarding NO_X emissions from the Hayden Smelter are flawed because EPA estimated the Hayden Smelter's NO_X emissions based solely on the consumption of natural gas used as fuel in the converters and anode furnaces. EPA did not account for process emissions of NO_X, such as thermal NO_X. According to ASARCO, EPA did not evaluate thermal or process NO_X emissions for any of the converters and anode furnaces at the Hayden Smelter, and did not address why there would not be thermal NO_X generation at these sources. Earthjustice requested that EPA redo its entire NO_X analysis, and start by requiring NO_X test data from the smelters for their various sources. Earthjustice stated that EPA should then properly assess the baseline NO_X emissions and proceed accordingly in terms of control technology evaluation and modeling, as needed.

Earthjustice added that even if EPA maintains the proposed 12-month rolling cap of 40 tpy as BART in the final rule, it should require testing to demonstrate compliance with the BART limit. Earthjustice believes that such testing should not only ensure that the

[117] *See* Freeport-McMoRan Copper & Gold, *Comments on Proposed Federal Implementation Plan for Arizona Regional Haze (EPA–R09–OAR–2013–0588) and Request for Reconsideration of the Partial Disapproval of Arizona State Implementation Plan* at 14.

[118] 40 CFR 51.308(e).

[119] BART Guidelines, 40 CFR part 51, appendix Y, section V.

[120] 79 FR 9347 (citing Letter from Krishna Parameswaran, ASARCO, to Gregory Nudd, EPA dated March 6, 2013, page 15).

Hayden Smelter's NO_X emissions stay below 40 tpy, but would inform the analysis in 2018 for the second implementation period. Earthjustice stated that for the Hayden Smelter and all other sources, it is important to use actual emissions data based on site-specific testing, rather than rough emissions estimates based on AP–42 or other unsupported emissions factors.

Finally, Earthjustice stated that in order to more accurately determine the Hayden Smelter's NO_X emissions, EPA should also analyze NO_X emissions from the flash furnaces which, although not BART-eligible, might also be significant sources of NO_X emissions. Even though the flash furnaces are not BART-eligible, Earthjustice stated that EPA should require reasonable progress controls at the flash furnaces to put Arizona's Class I areas closer to the 2064 glide path.

Response: We agree that some NO_X emissions might be formed in the converters, but we have no reliable means of estimating the quantity of such thermal NO_X. We note that, because of the high activation energy of the reactions required to form NO_X from oxygen and nitrogen, the rate of reaction is known to increase rapidly at temperatures above 1540 °C. This is hotter than the temperatures found in a Peirce-Smith converter.[121]

Further, we do not consider an evaluation of NO_X emissions from the flash furnaces to be necessary or appropriate for purposes of ensuring reasonable progress for this planning period. As explained in our proposal, we conducted a screening of point sources of NO_X throughout Arizona to determine which sources would be potential candidates for RP controls.[122] We did not identify the flash furnaces at the Hayden Smelter as a potentially affected source because they did not have any reported NO_X emissions. This evaluation should be revisited in future planning periods.

5. Comments on Emission Limitations for PM_{10}

Comment: Earthjustice noted that EPA's BART analysis only focused on SO_2 pollution for the various subject-to-BART units at the Hayden Smelter and suggested that EPA note the availability of superior fabric filter products that can provide increased PM control capabilities.

Response: This comment is not timely. We previously approved ADEQ's determination that BART for PM_{10} at the Hayden Smelter is the existing controls. Therefore, we did not conduct a BART analysis for PM_{10}.

Comment: ASARCO stated that BART does not authorize ''precautionary'' limits or other limits to ''ensure the enforceability'' of a no-control determination. ASARCO asserted that both ADEQ and EPA have determined that PM_{10} BART requires no more than existing controls. Therefore, EPA must rely on some legal basis for imposing a limit where BART establishes none. ASARCO stated that, at most, EPA can specify only the existing limits in the Hayden Smelter air permit.

Response: We do not agree with this comment. Regional Haze SIPs and FIPs must contain ''emission limitations representing BART'' for all subject-to-BART sources.[123] We previously approved Arizona's determination that existing controls constitute BART for PM_{10} at the Hayden Smelter. However, the SIP contained no emission limitation representing BART. Therefore, we are required to promulgate an emission limitation representing BART for PM_{10}, as well as compliance requirements to ensure the enforceability of this emission limit as part of the FIP.[124]

Comment: ASARCO stated that EPA's approval of the Arizona RH SIP's ''demonstration'' that no additional PM_{10} controls are warranted is not based in any way on 40 CFR part 63, subpart QQQ (NESHAP) requirements. ASARCO asserted that the PM_{10} demonstration and EPA's approval of it were based on the CALPUFF modeling and cost alone, and not in any way on 40 CFR part 63, subpart QQQ. Thus, ASARCO stated the final FIP should include a determination that 40 CFR part 63, subpart QQQ requirements are not necessary to enforce the PM_{10} BART determination and should exclude any 40 CFR part 63, subpart QQQ requirements accordingly.

AMA expressed similar opinions and asserted that the Arizona RH SIP was not based on 40 CFR part 63, subpart QQQ, but rather on the determination that there was no significant visibility impact from PM emissions. AMA asserted that for this reason, existing emission limits are all that are appropriate for the Hayden Smelter.

Response: We do not agree with these comments. As explained in the previous response, enforceable emission limits are required to implement Arizona's BART determinations for PM_{10}.[125] ADEQ made the following BART determinations for PM_{10} at the Hayden Smelter:

Primary Off-gas System: The existing combination of cyclones, wet scrubbers, and double contact double absorption acid plant represents BART for the primary off-gas stream because it represents the best current technology. BART is therefore selected as no further control beyond the cyclones, wet scrubbers, double contact double absorption acid plant system.

Secondary Off-gas System: The existing secondary hood baghouse is determined to be the best retrofit technology for the secondary off-gas. BART is therefore selected as no further controls beyond the secondary hood baghouse.

Tertiary Ventilation System: Given the extremely small visibility impact and the magnitude of the costs incurred, ADEQ has determined that tertiary ventilation control as BART is not a feasible option.[126]

ADEQ determined that the existing controls on the primary and secondary off-gas systems are the best available for PM_{10} and that tertiary ventilation control is not feasible for purposes of BART. ADEQ did not specify what emission limits would represent these existing controls. Thus, EPA must determine what emission limits reflect the ''degree of reduction achievable'' [127] by the selected control technology, in this case existing controls, to satisfy the regulatory requirements.

In making this determination, EPA considered ASARCO's own BART demonstration, which explicitly relies on the emission limits and compliance requirements in Subpart QQQ. In particular, for both the primary and secondary off-gas streams, ASARCO stated that, ''[c]onsistent with the *Guidelines,* ASARCO has chosen to use the 'streamlined approach' by relying on the particulate limit set for an acid plant in the National Emission Standard for Hazardous Air Pollutants (NESHAP) Subpart QQQ, Primary Copper Smelting . . .'' [128] For the primary off-gas stream, ASARCO explained that Subpart QQQ ''sets a limit of 6.2 milligrams per dry

[121] Alternative Control Techniques Document—NO_X Emissions from Process Heaters (Revised), OAQPS (September 1993).

[122] See 79 FR 9352.

[123] 40 CFR 51.308(e). Alternatively, plans may include an emissions trading program or other alternative that achieves greater reasonable progress toward natural visibility conditions than source-specific limits. No such alternative is at issue here.

[124] *Id.* See also CAA section 302(y), 42 U.S.C. 7602 (defining FIP as ''a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and *which includes enforceable emission limitations or other control measures.*'').

[125] See 40 CFR 51.308(e) and BART Guidelines section V, 70 FR 39172.

[126] SIP Supplement, Appendix D Section IX. This language appears to have been excerpted from ASARCO's own BART Demonstration. Compare *id.* with letter from Eric Hiser, Counsel for ASARCO, to Balaji Vaidyanathan, ADEQ dated March 20, 2013 (''ASARCO' BART Demonstration'') at 5.

[127] 40 CFR 51.301.

[128] ASARCO BART Demonstration at 5 (citing BART Guidelines section IV.C).

standard cubic meter (mg/dscm) non-sulfuric acid particulate matter'' and that ''[c]ompliance with this limit would be determined by annual testing in accordance with Section 63.1450(b) and continuous monitoring of scrubbing liquid flow rate over the final two towers in the acid plant established, reestablished and maintained in accordance with Section 63.1444(h).''[129] For the secondary off-gas stream, ASARCO explained that Subpart QQQ ''sets limit of 23 mg/dscm PM'' with annual compliance testing in accordance with Section 63.1450(a).[130]

Given that ASARCO relied on the Subpart QQQ requirements as the basis for its own streamlined BART analysis for PM_{10}, EPA considers it appropriate to include these requirements in the FIP. Incorporating these requirements into the FIP also fulfills the requirements of 40 CFR 51.308(e) for promulgation of BART emission limitations and is consistent with the BART Guidelines, which allow for streamlined BART analyses, such as the one EPA approved for PM_{10} at the Hayden Smelter, as long as the ''most stringent controls available are made federally enforceable for the purpose of implementing BART.'' [131] Therefore, we are finalizing the incorporation of the requirements of Subpart QQQ into the FIP.

Comment: ASARCO stated that the CAA's general SIP/FIP provisions do not support EPA's argument that sources for which there are no additional control requirements must nonetheless have emission limits established. ASARCO also stated that EPA's proposal is unacceptable because it suggests that where a state elects not to include a source in a SIP, it must include emission limits in the SIP that limit the non-included source's emissions to its baseline, a requirement not found in the CAA and unworkable as a practical matter.

Response: We do not agree with this comment. First, we note that the statutory and regulatory provisions cited in footnote 179 of our proposed rule (CAA section 110(a)(2)(F) and 40 CFR 51.212(c), 51.308(d)(3)(v)(C) and (F)) are not the only basis for including emission limitations and related compliance requirements for PM_{10} in the FIP. Several provisions of the CAA and EPA's regulations require the promulgation of enforceable emission limitations in SIPs and FIPs generally, and in regional haze plans specifically. In particular, CAA section 110(a)(2)(A) requires SIPs to ''include enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA].'' [132] One of the ''applicable requirements'' of the CAA is that plans contain ''such emission limits . . . as may be necessary to make reasonable progress'' toward natural visibility conditions, including provisions for BART and a LTS.[133] Under the RHR, plans must contain ''emission limitations representing BART'' for all subject-to-BART sources, as well as (1) a schedule for compliance with BART emission limitations for each source subject to BART; (2) a requirement for each BART source to maintain the relevant control equipment; and (3) procedures to ensure control equipment is properly operated and maintained.[134] Furthermore, the LTS must include consideration of ''emission limitations and schedules for compliance to achieve the reasonable progress goal'' and the ''enforceability of emission limitations and control measures.'' [135] Among the measures needed to ensure the enforceability of emission limits (including BART limits) are requirements for monitoring, recordkeeping, and reporting, as authorized by CAA section 110(a)(2)(F) and 40 CFR 51.212(c).

Second, contrary to ASARCO's suggestion, the Hayden Smelter is included in the Arizona RH SIP. In particular, while the State erroneously found that the Hayden Smelter was not ''subject-to-BART'' for PM_{10}, the SIP nonetheless included a BART determination for PM_{10} at the Hayden Smelter. EPA disapproved the State's not-subject-to-BART finding, but approved its BART determination that existing controls constitute BART for PM_{10}. Thus, a BART determination for PM_{10} for the Hayden Smelter is part of the approved Arizona RH SIP. However, the SIP did not include any enforceable emission limitations or related compliance requirements to implement this determination. Therefore, we found that the SIP did not meet the requirements of 40 CFR 51.212(c) and 51.308(e)(1)(iv) and (v).[136] We also disapproved the State's RPGs and portions of its LTS because the SIP did not include enforceable emission limits to implement the State's BART determinations.[137] We are now required to promulgate a FIP to fill the gaps resulting from disapproved portions of the SIP. Thus, we are required to promulgate enforceable emission limitations to implement the State's BART determination for PM_{10} at the Hayden Smelter.

Finally, we do not agree that the promulgation of enforceable emission limits where no new controls are required is ''novel.'' As explained above, inclusion of such limits is a requirement of the RHR, and EPA has previously promulgated such limits, even where no additional controls were required for BART.[138] Even where existing controls represent BART, there must be an emission limitation that reflects ''the degree of reduction achievable'' [139] by such controls.

Comment: ASARCO stated that EPA has no legal basis for imposing additional limits on PM beyond the existing limits at the Hayden Smelter given that the PM emissions from the smelter contribute 0.04 dv or less to regional haze. Thus, further limits are not necessary to achieve the RPGs. ASARCO asserted that the LTS also does not require emission limits.

Response: We do not agree with this comment. As explained above, the promulgation of PM_{10} limits for the BART-eligible units at ASARCO Hayden is required under 40 CFR 51.308(e). With regard to the requirements of the LTS, in addition to the requirement cited by the commenter, 40 CFR 51.308(d)(3)(v)(F) requires consideration of the ''enforceability of emission limitations and control measures'' (including BART emission limitations) as part of the LTS.

6. Other Comments

Comment: ASARCO stated that a CEMS on the bypass stack, as EPA has proposed at CFR 51.145(l)(6)(i), is impractical and that the stack is actually a shutdown ventilation duct used to redirect in-transit SO_2 and other gases out of the work environment in the event that the primary ventilation system becomes unavailable. ASARCO stated that events leading to the use of the shutdown ventilation duct are always associated with the cessation of

[129] Id.

[130] Id.

[131] BART Guidelines section IV.D, 70 FR 39165.

[132] 42 U.S.C. 7410(a)(2)(A). See also *Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174, 1196 (9th Cir. 2012) (''EPA correctly reads 42 U.S.C. [ ] 7410(a)(2) as requiring states to include enforceable emission limits and other control measures in the plan itself.'').

[133] CAA section 169A(b)(2), 42 U.S.C. 7491.

[134] 40 CFR 51.308(e)(1)(iv), (v).

[135] § 51.308(d)(3)(v)(C) and (F).

[136] 78 FR 46159.

[137] 78 FR 46171.

[138] See, e.g. 77 FR 57884 (explaining that BART emission limits must be established for all pollutants subject to review, even where no new controls are required); id. at 57916 (establishing an SO_2 BART limit for Holcim Cement Plant based on no new controls).

[139] 40 CFR 51.301.

smelting and converting and can be planned or unplanned.

ASARCO explained that the estimated annual SO_2 emissions resulting from 60 events per year (based on average process parameters measured during GCT's engineering study of the current system, assuming 30 unplanned events at full calculated mass SO_2 and 30 planned events at reduced SO_2 accounting for the clearing of the gas before shutdown) are 2.81 tons for the BART-eligible units. ASARCO considered this amount, less than 0.09 percent of the post-improvement SO_2 emissions, to be *de minimis.*

ASARCO stated that it also considered deployment of a SO_2 CEMS to quantify emissions resulting from use of the shutdown ventilation duct to be impractical because it would require ranging of the concentration analyzer and flow measurement instrumentation to enable quantification of the emissions during the infrequent and very brief events, while recording zero/near zero levels the majority of the time. The relative accuracy test audit (commonly called ''RATA'') required could only be done by passing representative-strength SO_2 gas past the analyzer for test periods totaling several hours, a situation that cannot occur (bypassing process gas while operating).

Response: We agree with this comment. Because of the difficulties involved in operating a CEMS on a bypass stack, we have modified the BART determination to allow the Hayden Smelter to use test data to quantify emissions during normal startups and shutdowns, provided the facility is operated according to a startup and shutdown plan.

Comment: AMA asserted that EPA should extend the compliance deadline in the rule, noting that if the rule continues as scheduled (promulgation by late June), the compliance date would be in June 2017. According to AMA, this is just months prior to the deadline of October 4, 2018, for Arizona to comply with the 1-hour SO_2 NAAQS, meaning that the smelters would have to have completed their projects to reduce SO_2 emissions to prevent causing or contributing to violations of the NAAQS. AMA noted that the two smelters, as indicated by their owners ASARCO and FMMI, are already planning to substantially modify their plants resulting in large SO_2 reductions in order to prevent violations of the SO_2 NAAQS, which will cost a significant amount of money, an amount higher than what EPA would consider reasonable under BART. AMA asked that EPA consider this significant undertaking by the two smelters and align the BART compliance deadline with the SO_2 attainment deadline.

AMA added that if nothing else, considering the projects the two smelters are undertaking, the EPA should consult with ASARCO and FMMI to ensure that the final rule does not interfere with plans the smelters have to reduce SO_2 emissions in order meet the 1-hour SO_2 NAAQS. AMA stated that coordination of the BART requirements with the facilities' effort to comply with the new SO_2 NAAQS is necessary to maintain the viability of these smelters, thereby preserving high-paying jobs and adding new jobs as the smelters install additional controls to comply with the CAA's visibility requirements and other programs.

Response: We partially agree with this comment. The BART level of control in the FIP is a performance standard. We do not prescribe any particular method of control. As a result, we do not anticipate any incompatibility with any changes that may be needed to comply with any attainment plan required by the 1-hour SO_2 NAAQS. With regard to the compliance deadline, we note that Arizona is required to develop a SIP that provides for attainment of the 1-hour SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018.[140] Furthermore, as explained in EPA's Guidance for 1-hour SO_2 Nonattainment Area SIP Submissions ''. . . EPA expects attainment plans to require sources to comply with the requirements of the attainment strategy at least 1 calendar year before the attainment date.'' [141] Therefore, the Hayden and Miami Smelters would be required to comply with the attainment strategy by January 1, 2017.[142] Accordingly, the expected source compliance date under the 1-hour SO_2 NAAQS actually precedes the proposed compliance date in the RH FIP of three years from promulgation of the final rule (i.e., about July 2017).

Furthermore, based on additional information received during the comment period, we have decided to extend the compliance deadline for the secondary control system at the Hayden Smelter by an additional year (i.e., to about July 2018). As explained elsewhere in response to comments and in our revised BART analysis for the Hayden Smelter, our BART determination for the secondary stream now reflects the use of an amine scrubber rather than acid plant. We are not aware of any instances of an amine scrubber being used at any similar facility in the United States. Therefore, we no longer consider three years to be sufficient time for design, construction, and a shakedown period. Accordingly, we are finalizing a compliance deadline of four years from publication of the final rule for the requirements applicable to the secondary stream. We are retaining the proposed compliance deadline of three years from publication of the final rule for the requirements applicable to the primary stream.

Finally, we also note that, during the development of our proposed FIP, we requested and received information from ASARCO and FMMI regarding control upgrades planned for purposes of attaining the 1-hour SO_2 NAAQS.[143] During the comment period on the proposed FIP, we received more detailed additional information from both companies.[144] We have also met with representatives from both companies.[145] As described elsewhere in this document, we have made certain revisions to the regulatory text applicable to the smelters to ensure that there is no incompatibility between the requirements of the RH FIP and the smelters' plans to ensure attainment of the 1-hour SO_2 NAAQS.

D. Comments on the Miami Smelter

1. General Comments

Comment: ADEQ stated that EPA's disapproval of ADEQ's SO_2 BART determinations for the Miami and Hayden Smelters is unsupported. Similarly, AMA, NMA and FMMI requested that EPA reconsider its decision to disapprove these BART determinations. In particular, FMMI asserted that once EPA accounts for the technical deficiencies in its own BART analysis, the Agency will conclude that additional controls at the Miami Smelter are not justified as BART.

Response: We do not agree with these comments. Our action on the Arizona RH SIP is now final, and the commenters have cited no legal basis for EPA to reconsider that action. Moreover, the commenters have mischaracterized EPA's disapproval of Arizona's SO_2 BART determinations for the copper smelters, which was based on multiple

[140] 78 FR 47190, 47193.

[141] Memorandum from Stephen Page to Regional Air Division Directors, Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions (April 23, 2014) at 10.

[142] Id.

[143] See Letters from Colleen McKaughan, EPA, to Jack Garrity, ASARCO, and Derek Cooke, FMMI (June 27, 2013); Letter from Jack Garrity, ASARCO, to Thomas Webb, EPA (July 11, 2013); letter from Derek Cooke, FMMI, to Thomas Webb, EPA (July 12, 2013).

[144] See comment letters from ASARCO and FMMI.

[145] See Memo Regarding Communications with ASARCO on RH FIP; Memo Regarding Meeting with FMMI (April 28, 2014).

deficiencies including the lack of any five-factor analysis and any enforceable emission limits. The commenters' assertions regarding purported deficiencies in EPA's own BART analysis are addressed in other responses.

Comment: ADEQ asserted that EPA's disapproval of ADEQ's determination that the Miami Smelter is not subject to BART for NO_X has no statutory basis, and that EPA's imposition of BART for NO_X emissions is arbitrary and capricious.

Response: To the extent this comment concerns our action on the Arizona RH SIP, it is untimely, as that action is now final. To the extent it concerns our proposed FIP, we do not agree with its substance for the reasons set forth in response to similar comments on the Hayden Smelter above.

2. BART Analysis and Determination for SO_2 From the Converters

Comment: FMMI noted that Converter 1 has been out of service since the mid-1980s, and the company has no plans to reactivate it. Therefore, all of the SO_2 emissions from the converter aisle should be attributed to Converters 2–5, which are the BART-eligible units.

Response: We appreciate the clarification regarding Converter 1. Because emissions from the different converters cannot be separated for technical reasons, we treated all converter emissions as BART-eligible. Thus, the fact that Converter 1, which is not a BART-eligible unit, is inoperable, does not affect our BART analysis. We have revised the regulatory text to clarify that the requirements of the FIP do not apply to Converter 1.

Comment: FMMI asserted that the ''secondary hood'' required by 40 CFR 63.1444(d)(2) does not apply to Miami Smelter's Hoboken converters because the Miami Smelter does not use Peirce-Smith converters. FMMI also requested that EPA structure the FIP in a way that will ensure consistency between any new BART requirements and the controls that FMMI intends to install to ensure that the emissions from the Miami Smelter do not interfere with attainment of the 1-hour SO_2 NAAQS. ADEQ, AMA and NMA echoed these comments.

Response: We agree that 40 CFR 63.1444(d)(2) does not apply to the Miami Smelter converters. Our reference to that provision of the NESHAP in the proposed FIP was not intended to suggest otherwise. Rather, it was intended to ensure that FMMI install a secondary capture system to collect emissions that currently escape the existing primary capture system at the Miami Smelter's converters. This secondary system for the Hoboken need not be identical to the secondary capture system used for the Peirce-Smith converters. Rather the FIP provides FMMI with substantial flexibility to design a capture system appropriate for the unique configuration of its converters, provided that FMMI demonstrates that this system is designed and operated to maximize collection of process off-gases vented from the converters. In fact, the aisle capture system that FMMI plans to install is itself a type of secondary capture system that could meet the requirements of the FIP, provided that it is optimized to capture the maximum amount of process off-gases vented from the converters. We have revised the regulatory language to clarify this requirement by removing the reference to 40 CFR 63.1444(d)(2) and defining ''capture system'' to reflect the broad range of components that could be included in the system.

Comment: FMMI stated that it is not technically feasible to route additional captured SO_2 from the converters to the acid plant. FMMI explained that while, in an earlier letter, it had stated that SO_2 emissions collected by the roofline capture system would be routed to the acid plant, this was an error since the routing is not technically feasible. Specifically, FMMI asserted that ''the SO_2 concentrations in this gas stream are much too low and the flow volume too high to allow the existing acid plant to handle this stream'' and that ''gases from the aisle capture system would also have significant heating requirements, and associated air emissions, if they were to be routed to the existing acid plant.'' ADEQ, AMA, and NMA echoed FMMI's concerns regarding the technical feasibility of the proposed requirements for SO_2.

Response: We do not agree that the FIP requirements for the Miami Smelter are technically infeasible. In particular, as explained in response to comments from ASARCO above, while higher flow volumes and lower SO_2 concentrations may reduce the control efficiency and cost-effectiveness of a double contact acid plant, they do not render use of such an acid plant infeasible. Nonetheless, if FMMI determines that the existing double contact acid plant is not adequate to treat emissions captured by the secondary capture system, it may use an alternative approach to comply with the requirements of the FIP. In particular, because the FIP does not prescribe any particular method of control, any combination of control devices may be employed to meet the 99.7 percent control requirement. For example, FMMI may continue to use the existing double contact acid plant and tailstack scrubber on the primary stream and construct a new scrubber to treat the secondary stream, as it currently plans to do. Because the control efficiency is calculated on a cumulative mass basis, it will be determined largely by the degree of control achieved by the existing double contact acid plant and tailstack scrubber, which treat the vast majority of emissions from the converter aisle.[146]

For example, consider a situation where 100,000 pounds of SO_2 is emitted by the converters.[147] Of this 100,000 pounds, 99 percent is captured by the primary capture system and ducted to the acid plant system, which has a control efficiency of 99.8 percent.[148] The remaining 1 percent is captured by the secondary capture system and ducted to a caustic scrubber with a control efficiency of 90 percent.[149]

Ducted to acid plant: 99 percent of 100,000 lbs = 99,000 lbs
Controlled by acid plant: 99.8 percent of 99,000 lbs = 98,802 lbs
Ducted to scrubber: 1 percent of 100,000 lbs = 1,000 lbs
Controlled by scrubber: 90 percent of 1,000 lbs = 900 lbs
Overall control efficiency: (98,802 + 900)/100,000 = 0.997 = 99.7 percent

Thus, FMMI can meet this overall control efficiency by improving the efficiency of the primary capture system, improving the efficiency of the primary control system (e.g., increasing the use of cesium promoted catalyst, increasing operation of the tailstack scrubber, or converting the tailstack scrubber from a magnesium oxide scrubber to a caustic or amine scrubber),

[146] FMMI previously estimated a capture efficiency of up to 98 percent for the primary capture system. Letter from Derek Cooke, FMMI to Tom Webb, EPA (January 25, 2013) at 5. More recently, FMMI has indicated that this capture efficiency will be improved by installation of actuated mouth covers, Freeport-McMoRan Miami Inc. BART Analysis (March 2014) (FMMI BART Report), at 2–4, and could be as high as 99.57 percent. See Memorandum from J. Nikkari, Hatch to C. West, FMMI (November 14, 2013) (Hatch Memo), section 3.1.2.

[147] Present emissions from the converter aisle are estimated to be 161,564. Id.

[148] The estimated control efficiency of the acid plant and tailstack scrubber system is currently 99.69 percent. Id. section 3.4. This control efficiency could be increased through increased use of the tailstack scrubber, as described further below, and conversion of tail gas scrubber to utilize caustic (NaOH), to enhance the SO_2 control efficiency, which FMMI intends to do. See ADEQ Significant Permit Revision Application, ADEQ Class I Permit Number 53592, Smelter Expansion & Enhanced Controls; (July 2013) (FMMI Permit Application), section 4.1.1.

[149] Id. section 4.1.4 (''Captured SO_2 emissions were assumed to be controlled by the scrubber with an average efficiency of roughly 90 [percent].''

maximizing the efficiency of any new equipment installed to control emissions from the secondary capture system, or any combination of these options.

Comment: FMMI asserted that by using a mass-balance approach to estimate SO_2 emissions from the converter aisle, EPA had overestimated emissions and thereby overestimated the visibility improvement and underestimated the cost per ton of additional SO_2 controls. FMMI described ''its own attempts to measure fugitive SO_2 emissions'' (i.e., the Roofline Study) and asserted that EPA should have used emission estimates based on the Roofline Study, instead of emission estimates based on a mass-balance method, which FMMI characterized as ''highly imprecise'' and ''unclear.'' FMMI further noted that ''EPA's calculation does not incorporate the effect of the new converter mouth covers, which reduce process fugitive emissions from the converters.'' Finally, FMMI concluded that EPA's use of a mass-balance approach is contrary to the BART Guidelines, which state that the baseline emission rate ''should represent a realistic depiction of anticipated annual emissions from the source.'' Similarly, Earthjustice and NMA both questioned EPA's estimate of uncollected SO_2 emissions.

Response: We disagree that we overestimated uncaptured baseline SO_2 emissions.[150] We estimated uncaptured baseline SO_2 emissions from the converters using the following mass-balance approach: (1) We calculated the amount of sulfur in the concentrate processed by the smelter using throughput and composition data provided by FMMI for the maximum production day and a baseline year (2010); (2) we assumed full conversion of sulfur to SO_2; (3) we apportioned 65 percent of the SO_2 to the smelter aisle and 35 percent to the converter aisle based on information provided by FMMI; [151] and (4) We assumed 95 to 98 percent capture of emissions by the Hoboken converters' side flues.[152] We consider this modified mass-balance approach to provide a more accurate depiction of emissions than the mass-balance approach in the Arizona RH SIP, which FMMI notes ''has proven to be unreliable.''

With regard to the Roofline Study, while we encourage ongoing efforts by FMMI to increase understanding of emissions that bypass the existing capture systems, we do not agree that the results of the Roofline Study are more accurate than the values that we used in our emission calculations. The Roofline Study measured emissions at four points along the open roof.[153] Given that the roof and sides of the building are not fully enclosed, it is very unlikely that these four points accurately reflect all of the emissions currently escaping from the converter aisle.[154] Indeed, the authors of the Roofline Study acknowledge that the emission rates presented ''may not adequately measure the true value of the parameter'' and are presented for ''illustration purposes.'' [155] We also note that, following the close of the comment period, we received from FMMI a report summarizing the results of an ''extended roofline sampling campaign'' from approximately March 2013 through December 2013.[156] While this extended sampling effort is intended to provide ''more representative, long-term roofline SO_2 emission estimates for current operation,'' [157] it still does not account for ''unmeasured fugitive emissions.'' [158] Therefore, we do not agree that this the Roofline Study necessarily provides a more accurate estimate of SO_2 emissions than the mass-balance method we used.

Furthermore, even assuming for the sake of argument that FMMI's revised emission estimates based on the Roofline Study are correct, uncaptured baseline emissions from the converters would be 547 tpy.[159] In order to reach the 109 tpy estimate of uncaptured SO_2 emissions from the converters employed in its BART analysis, FMMI relies on an unverified and unenforceable 80 percent capture efficiency from improvements to the converter mouth covers.[160] However, use of this ''expected'' capture efficiency does not provide an adequate basis for reducing baseline uncaptured emissions from the converters from the current emissions level, as measured estimated by the Roofline Study. As explained in the BART Guidelines, in the absence of enforceable limitations, you calculate baseline emissions based upon continuation of past practice.[161] Although we support measures to increase the amount of emissions captured by the side flue and ducted to the acid plant, at present, there is no enforceable emission limitation that ensures that the mouth covers will achieve 80 percent capture of the existing uncaptured converter emissions. Therefore, even if the extended roofline study did provide an accurate estimate of uncaptured emissions and FMMI's allocation of those emissions among various emission units was correct, baseline uncaptured emissions from the converters would be at least 547 tpy, not 109 tpy, as indicated by FMMI.

Comment: FMMI stated that EPA's reliance on cost data from the Hayden Smelter underestimates the costs of additional controls because the Peirce-Smith Converters used at the Hayden Smelter are fundamentally different from the Hoboken Converters used by FMMI. FMMI asserted that this and other differences in the operational configuration of the two facilities means that the types of controls available and their respective costs are not transferrable between facilities. FMMI noted that it had prepared its own five-factor analysis, which FMMI stated relies upon the most up-to-date cost estimates that FMMI has received from Hatch Engineering, which designed the smelter project including the upgraded roofline capture system and the new aisle scrubber. FMMI asserted that this cost data presented in the FMMI BART Report is the best and most accurate cost information that is available to FMMI and EPA at this time and that EPA should rely upon this cost data in any BART analyses it conducts for the Miami Smelter.

[150] FMMI describes uncaptured emissions from the converters as ''fugitive emissions.'' However, under the RHR, ''fugitive emissions'' are defined as ''those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.'' 40 CFR 51.301. Because FMMI is planning to capture a significant portion of these emissions and route them to a scrubber, they are, by definition, not fugitive.

[151] Letter from Derek Cooke, FMMI to Thomas Webb, EPA (July 12, 2013).

[152] See Letter from Derek Cooke, FMMI to Tom Webb, EPA (January 25, 2013) at 5 (reporting a range of values of 87 percent to 98 percent). We used the high end of this range to ensure that our cost per ton estimates were conservative. That is, we assumed the baseline level of uncaptured emissions was lower and that there were therefore fewer emission reductions available, resulting in higher cost per ton values.

[153] *Roofline Study,* prepared by Trinity Consultants for Freeport McMoRan, Inc. (November 2013).

[154] We note that the FMMI Permit Application indicates that the roofline capture system will collect 84 percent of ''process fugitives'' (i.e. currently uncaptured emissions) from the converters, meaning that the remaining 16 percent will escape elsewhere. Given that FMMI is not even attempting to capture any emissions at the roofline now, we expect that more than 16 percent of presently uncaptured emissions are bypassing the roofline monitors and are therefore not reflected in the results of the roofline study.

[155] Id. Section 5.1.

[156] Report: Extended Roofline SO_2 Emissions Summary (March 2014).

[157] Id. section 1, page 2.

[158] Id. section 3.1, page 2.

[159] FMMI BART Report, Appendix A (BART-Eligible Baseline Emissions Calculations), Table A–1 (BART Baseline Emissions).

[160] Id. note 4.

[161] 40 CFR part 51, appendix Y, section IV.D.4.d.2.

Response: In order to avoid potential disclosure of cost data for the Miami Smelter claimed as CBI by FMMI, we based our cost analysis for the construction of secondary hooding, wet scrubbers and similar, though not identical, equipment on non-confidential data provided by ASARCO for the Hayden Smelter. FMMI included additional non-confidential cost information in the BART Report it submitted with its comments. In addition, following the close of the comment period, FMMI withdrew its CBI claim from its prior submittals, including Appendix B to the BART Report.[162] We have reviewed the BART Report and found that it contains a number of incorrect or unsupported assumptions that improperly inflate the $/ton estimates for the various control options presented. First, it assumes capture of emissions at the roofline rather than in the converter aisle itself. This design does not attempt to capture or control emissions until after mixing with ambient air inside the building, resulting in very high volumes of very low-concentration gases that are more costly to control. Second, the cost estimates include costs of control for non-BART units.[163] Third, the cost estimates are not supported by sufficient documentation, such as vendor quotes.[164] Finally, the cost estimates include costs not permitted by the CCM (e.g. owner's costs).[165] Therefore, we do not consider the cost estimates provided in FMMI's BART Report to accurately reflect the cost of potential BART controls.

Nonetheless, in order to further evaluate the cost-effectiveness of SO_2 controls for the converters, we have conducted a supplemental cost analysis based on the cost information provided by FMMI. In this analysis, we have employed the cost estimates provided by FMMI, but revised the calculations to reflect the present level of uncaptured emissions from the converter aisle based on the mass-balance approach described above.[166] According to the supplemental analysis, the cost-effectiveness of the control options evaluated by FMMI falls in the range of $2,386 to $5,478 per ton of SO_2. The upper end of this range is higher than we have previously found reasonable for purposes of BART. However, for the reasons described in the preceding paragraph, this estimate significantly overstates the costs of controlling the BART-eligible emissions. Accordingly, we do not agree that we should employ these costs in our BART analysis.

Comment: FMMI asserted that neither the 99.7 percent control efficiency nor the 99.8 percent alternative control efficiency proposed by EPA could be feasibly measured at FMMI for three reasons. First, differences in precision between the acid plant inlet (percent) and tailstack (ppm) CEMS ''mean that the two CEMS cannot be compared with an acceptable degree of accuracy . . .'' Second, ''the measurement of acid plant inlet and tail stack gas concentrations to determine control efficiencies contains an underlying assumption that there is a constant amount of time that it takes gases to pass through the acid plant.'' Third, an expected 2 percent measurement drift in the acid plant inlet CEMS exceeds the measured concentration of the tailstack CEMS measurement span.

Response: We disagree that it is technically infeasible to measure the required 99.7 percent control efficiency. We recognize that the acid plant inlet CEMS will have a much greater span than the tailstack CEMS. However, as explained in response to similar comments on the Hayden Smelter, because the emission limit is a percent control on a cumulative mass basis, the measurement of the inlet CEMS can vary appreciably without affecting compliance status.

In addition, the compliance method in the proposed regulatory text makes no assumptions about residence time in any control device because it does not rely on instantaneous control efficiencies. Instead, it compares uncontrolled and controlled total masses over a 30-day period. Since the control efficiency data provided by FMMI were based on annual data, however, we have modified the final determination to be a rolling 365-day average rather than a rolling 30-day average.

Finally, in response to a request from FMMI,[167] we have added an additional option for measuring SO_2 levels in the secondary stream. In particular, if FMMI chooses to control the secondary stream using an alkali scrubber, then it may calculate the pounds of SO_2 entering the scrubber based on the amount of alkali added to the scrubber liquor, rather than installing an inlet CEMS.

Comment: FMMI requested clarification concerning EPA's proposal to calculate control for a combination of controlled and uncontrolled emissions. FMMI noted that EPA's calculated control efficiency of 99.69 percent excluded the bypass stack.

Response: We calculated the acid plant's control efficiency based on annual SO_2 emissions from the acid plant tailstack and annual production of sulfuric acid.[168] This is a level of control that FMMI has demonstrated achieving in practice when emissions are ducted to the acid plant. Emissions from the bypass stack consist of uncontrolled emissions released during startup, shutdown, and malfunction events.[169] Because BART emission limits apply at all times, including periods of startup, shutdown, and malfunction, the control efficiency requirement in the FIP includes uncontrolled emissions from the bypass stack. FMMI reported annual average SO_2 emissions from the bypass stack of only 65 tpy in 2011 to 2012, and projected zero SO_2 emissions from the bypass stack following its planned control upgrades.[170] Therefore, any emissions from the bypass stack will be *de minimis* and will not impair FMMI's ability to meet the 99.7 percent control efficiency requirement on a rolling 365-day basis.

Comment: FMMI stated that its own five-factor analysis demonstrates that existing controls meet BART, additional controls are not justified, and EPA's contrary finding is based on a technically flawed BART analysis.

Response: We do not agree with this comment. As described above, FMMI's five-factor analysis relies on unrealistically low estimates of uncontrolled emissions and unrealistically high estimates of control costs, resulting in improperly inflated $/ton estimates. Based on these unrealistically high $/ton values, the FMMI BART Report improperly concludes that no additional controls are cost-effective. Because of the flaws

[162] Letter from Jay Spehar, FMMI, to Geoffrey Glass, EPA (May 7, 2014).

[163] See, e.g., BART Report page 3–15 (''Annual scrubbing reagent costs were calculated from total estimated SO_2 design reductions (i.e., inclusive of emission units that are not BART-eligible).''

[164] See 70 FR 39166 ''The basis for equipment cost estimates also should be documented, either with data supplied by an equipment vendor (i.e., budget estimates or bids) or by a referenced source.''

[165] BART Report page 3–15 (''Owner's costs were likewise factored as a percentage of the total direct plus indirect cost. A value of 6.7 percent was applied for this analysis.'')

[166] Memo regarding BART Cost Using FMMI Data, June 11, 2014.

[167] Phone call between FMMI and EPA, May 21, 2014.

[168] See appendices C and J to FMMI's Jan. 2013 letter. See also, Memorandum from J. Nikkari, Hatch to C. West, FMMI (November 14, 2013) (Hatch Memo), section 3.4 (calculating 99.69 percent control efficiency for existing acid plant and tail stack scrubber system).

[169] Letter from Derek Cooke, FMMI, to Thomas Webb, EPA (January 25, 2013) at 7.

[170] ADEQ Significant Permit Revision Application, ADEQ Class I Permit Number 53592, Smelter Expansion & Enhanced Controls; (July 2013) (FMMI Permit Application), Tables A–2 and A–b.

underlying these cost analyses, we do not agree with this conclusion.

Comment: FMMI stated that EPA should consider FMMI's planned pollution controls as a better-than-BART alternative. FMMI asserted that EPA is aware that FMMI is in the process of obtaining a permit revision to install significant new controls to ensure the smelter does not cause or contribute to a violation of the 1-hour SO_2 NAAQS. ADEQ also noted that FMMI is currently working with ADEQ to revise its permit to accommodate a facility expansion, and is evaluating controls necessary to comply with the 1-hour SO_2 NAAQS.

Response: EPA is willing to consider FMMI's planned pollution controls for 1-hour SO_2 NAAQS compliance as a potential ''better-than-BART'' alternative under 40 CFR 51.308(e)(2). However, FMMI's current proposal does not meet the requirements for a better-than-BART alternative. First, in order to qualify as a better-than-BART alternative, FMMI's proposed alternative would have to achieve more emissions reductions than BART.[171] FMMI estimates that its proposed control upgrades will result in an emission reduction of 6,054 tpy of SO_2 (future PTE minus past two-year actual).[172] The bulk of this reduction would come from smelter ''fugitives'' that FMMI estimates would be reduced from 4,836 tpy of SO_2 (actual from 2011–2012) to 288 tpy (potential). However, this is inconsistent with FMMI's BART analysis, which estimated actual baseline SO_2 emission from 2011 to 2012 as 1,033 tpy.[173] In order to make a better-than-BART demonstration, FMMI should use a consistent estimate of baseline emissions, rather than using different estimates of baseline emissions for its BART and better-than-BART analyses.

Second, FMMI's proposal would have to include a schedule for implementation, enforceable emission limitations, and monitoring, recordkeeping and reporting requirements.[174] FMMI's proposal, as set forth in its permit application and the draft permit developed by ADEQ,[175] does not include all of these elements. Therefore, it does not meet the requirements for a better-than-BART alternative. If ADEQ wishes to submit a better-than-BART alternative as a SIP revision, we will work with FMMI and ADEQ to develop such a revision.

Comment: NPS supports EPA's proposed requirements to control SO_2 emissions from the Miami Smelter.

Response: We acknowledge NPS's support.

Comment: In response to EPA's request for comment on whether a control efficiency more stringent than 99.7 percent is warranted, Earthjustice asserted that a better control efficiency is achievable, and as a result Earthjustice does not support EPA's proposed control efficiency requirement. Earthjustice indicated that the proposed control efficiency requirement appears to be the stated (and unverified) level of control currently achieved at the Miami Smelter. However, the BART Guidelines require EPA to base its analysis on the most stringent control efficiency achievable. Noting that the proposed level is lower than that proposed for the Hayden Smelter, Earthjustice stated that the control efficiency of the Miami Smelter's acid plant should be 99.93 percent or greater for the same reasons that Earthjustice put forward for the Hayden Smelter.

Response: We disagree with this comment for the reasons described in response to a similar comment regarding the Hayden Smelter. In particular, the examples of higher control efficiencies cited by the commenter are not directly comparable to the Miami Smelter because they are different types of operation.

3. BART Analysis and Determination for NO_X

Comment: AMA, FMMI, and NMA said that the proposed NO_X limits for the Miami Smelter exceed EPA's authority. The commenters asserted that because NO_X emissions from the BART-eligible sources at FMMI are below the exception threshold, the RHR provides that they may be excluded from BART analysis. The commenters indicated that they disagree with EPA's position that ''all visibility impairing pollutants will be subject-to-BART once a source is subject-to-BART for any pollutant *unless* the pollutant in question is emitted at a level below the exception threshold.'' NMA asserted that this was inconsistent with EPA's prior acknowledgment that ''it is reasonable to read [42 U.S.C 7491(b)(2)(a)] as requiring a BART determination *only* for those emissions from a source which are first determined to contribute to visibility impairment in a Class I area.'' [176] FMMI added that nothing in the CAA grants EPA authority to establish emissions caps to ensure that facilities remain at or below the exception threshold. Even if EPA's position were justified, baseline NO_X emissions from the smelter, which FMMI has submitted to EPA, indicate that the BART-eligible equipment only emits 21.7 tpy, which the commenters indicated is far below the BART exception threshold of 40 tpy. For these reasons, the commenters opposed EPA's proposal for NO_X at the Miami Smelter.

FMMI and NMA also stated that EPA's partial disapproval of the Arizona RH SIP does not affirmatively demonstrate that the smelter is subject-to-BART for NO_X, and EPA's proposal to subject FMMI to a BART analysis for NO_X is legally deficient. According to AMA, if the source has been determined to be subject to BART for a particular pollutant, EPA has the following two options: (1) Impose BART controls based on the outcome of the five-factor analysis or (2) determine that a source is *de minimis* and exempt it from a BART analysis. AMA said that the NO_X emissions cap is arbitrary and capricious and should not be included in the final rule.

Response: We acknowledge that we inadvertently omitted from our proposal a complete explanation of the basis for our proposed determination that the Miami Smelter is subject to BART for NO_X. However, we do not consider this omission prejudicial because, as noted by FMMI, the rationale for this proposed determination is the same as the rationale for our disapproval of ADEQ's determination that the Miami Smelter was not subject to BART for NO_X.[177] FMMI commented extensively on this element of the SIP action and included these comments as an attachment to its FIP comments. EPA responded to these comments in the context of our SIP action.[178] As explained in our final action on the SIP:

> Once a source is determined to be subject to BART, the RHR allows for the exemption of a specific pollutant from a BART analysis only if the PTE for that pollutant is below a specified *de minimis* level. Although a small

[171] See 40 CFR 51.308(e)(2)(i)(E) and (3).

[172] ADEQ Significant Permit Revision Application, ADEQ Class I Permit Number 53592, Smelter Expansion & Enhanced Controls; (July 2013) (FMMI Permit Application), Table A–4.

[173] FMMI BART Analysis Table A–1.

[174] See 40 CFR 51.308(e)(2)(iii).

[175] ADEQ Air Quality Class I Permit # 53592 (As Amended by Significant Revision No. 58409) Freeport McMoRan Inc. Miami Smelter (Draft, April 22, 2014).

[176] Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations, 70 Fed. Reg. 39,104, 39,116 (July 6, 2005) (emphasis added).

[177] See 79 FR 9347 (referring to disapproval of not-subject-to-BART finding in the Arizona RH SIP); 77 FR 75721 (proposed disapproval of not-subject-to-BART finding in the 2011 RH SIP); 78 FR 29301 (proposed disapproval of not-subject-to-BART finding in the RH SIP Supplement).

[178] See 78 FR 46156 (responses to FMMI comments regarding proposal on 2011 RH SIP) and 46170–71 (responses to FMMI comments regarding proposal on RH SIP Supplement).

pollutant-specific baseline visibility impact may be informative in determining what control option may be BART, a BART analysis is still required for any pollutant with a PTE that exceeds the *de minimis* threshold at an otherwise subject-to-BART source.[179]

The preamble to the 2005 revisions to the RHR and BART Guidelines cited by FMMI does not conflict with this interpretation. When EPA revised the RHR, we proposed to interpret CAA section 169A(b)(2)(A) to require a BART analysis for all visibility-impairing pollutants emitted by a source, regardless of amount. However, in the final rule, we explained that there were two reasonable interpretations of the statutory text:

> Section 169A(b)(2)(A) of the Act can be read to require the States to make a determination as to the appropriate level of BART controls, if any, for emissions of any visibility impairing pollutant from a source. Given the overall context of this provision, however, and that the purpose of the BART provision is to eliminate or reduce visibility impairment, *it is reasonable to read the statute as requiring a BART determination only for those emissions from a source which are first determined to contribute to visibility impairment in a Class I area.*[180]

FMMI cites the emphasized language, but omits the surrounding discussion, which explains that section 169A(b)(2)(A) could reasonably be read either to require a BART analysis for emissions of any visibility impairing pollutant from a source or to require an analysis only for emissions first determined to contribute to visibility impairment. The preamble does not state which of these two interpretations EPA was adopting. However, in the RHR, EPA retained the requirement that States make a BART determination for each ''BART-eligible source in the State that emits *any* air pollutant'' which may cause or contribute to any impairment of visibility in any Class I area.[181] The only revision made to allow for exemption of specific pollutants from a BART analysis was the addition of the *de minimis* exemption in 40 CFR 51.308(e)(ii)(C). EPA's decision to include this particular exemption, but no other, in the regulatory text makes it clear that individual pollutants may be exempted only where emissions of those pollutants are below the *de minimis* threshold. Under the commenters' theory that sources are subject-to-BART on a pollutant-by-pollutant basis, a source with an impact at a Class I area was 0.4 dv for SO_2 and 0.4 dv for NO_X would not be subject to BART at all, even though it clearly contributes to visibility impairment. EPA recognized the absurdity of this situation, and therefore chose to use the *de minimis* exceptions as the only means by which a state can avoid conducting a BART analysis for a given pollutant after the source as a whole has been deemed subject to BART.

Moreover, the *de minimis* threshold is not based on historical emissions, as suggested by FMMI, but on the source's PTE.[182] PTE is defined as ''the maximum capacity of a stationary source to emit a pollutant under its physical and operational design.'' [183] Physical or operational limitations on emissions capacity (e.g., restrictions on hours of operation) may be taken into account, but only if those limitations are federally enforceable.[184] For the Miami Smelter, the WRAP estimated an annual NO_X emission rate of 156 tpy for the units constituting the BART-eligible source.[185] FMMI has not identified enforceable physical or operational limitations that would limit potential emissions from these units to less than 40 tpy. While FMMI cites to various documents that it asserts demonstrate that the Miami Smelter's NO_X emissions are below the *de minimis* threshold, these documents consist of historical records of emissions, fuel usage, and material throughput.[186] They do not establish the maximum capacity of the BART-eligible source to emit NO_X and therefore do not demonstrate that potential NO_X emissions are less than 40 tpy. Likewise, the fact that EPA has estimated that the *historic* baseline emissions from the BART-eligible units are 38 tpy does not establish that *potential* emissions are less than 38 tpy. Unlike subject-to-BART determinations, which are made based on a source's PTE, emission rates for cost calculations in BART analyses are generally ''based upon actual emissions from a baseline period.'' [187] The PTE for the BART-eligible units at the Miami Smelters remains above 40 tpy, and the source is therefore subject-to-BART for NO_X.

Based on our five-factor BART analysis for NO_X emissions from the Miami Smelter, we proposed to determine that no additional controls are needed for purposes of BART. FMMI supports this conclusion, but argues that there is no need for an emission limitation to implement this determination. We do not agree. Regional haze implementation plans must contain ''emission limitations representing BART'' for all subject-to-BART sources.[188] In particular, either the State or EPA must establish an enforceable emission limit for each subject emission unit at the source and for each pollutant subject to review that is emitted from the source.[189] This requirement applies even where BART is determined to be consistent with existing controls. Otherwise, emissions could increase to a level where additional controls would be warranted for BART, but no mechanism would exist to require such controls. Contrary to FMMI's suggestion, additional BART controls could not be required by EPA in the next regional haze plan for Arizona, as BART is only required in the first regional haze plan and cannot be deferred to future planning periods.[190] Thus, an emission limit for NO_X is needed to comply with 40 CFR 51.308(e).

Comment: Earthjustice stated that EPA's NO_X emissions analyses and BART determinations are fatally deficient because the estimate of BART-eligible NO_X emissions is based on the combustion of natural gas alone, with no consideration of the formation of thermal NO_X in the converters and the electric furnace.

Response: We do not agree with this comment for the reasons provided in response to similar comments regarding the Hayden Smelter.

4. Comments on Enforceable Emission Limits for PM_{10}

Comment: FMMI asserted that ''EPA's current reliance on the NESHAP standards to ensure enforceability demonstrates that the Agency's criticism of Arizona's SIP as lacking 'emissions limits and compliance requirements' was misplaced.''

Response: We do not agree that our proposal to rely on the NESHAP provisions to ensure the enforceability of BART for PM_{10} at the Miami Smelter is inconsistent with our finding that the Arizona RH SIP lacked enforceable emission limits to implement BART. As explained in our actions on the Arizona RH SIP, ADEQ sought to rely on the NSPS requirements to ensure the enforceability of its SO_2 BART determinations for both the Hayden and Miami Smelters.[191] However, under the

[179] 78 FR 46156 (citing 40 CFR 51.308(e)(1)(ii)(C)).

[180] 70 FR 39115–16.

[181] 40 CFR 51.308(e)(ii) (emphasis added).

[182] 40 CFR 51.308(e)(1)(ii)(C).

[183] 40 CFR 51.301.

[184] Id.

[185] Summary of WRAP RMC BART Modeling for Arizona, Draft#5, May 25, 2007.

[186] FMMI Comment Letter at 13, n.1.

[187] BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.4.d.1.

[188] 40 CFR 51.308(e).

[189] BART Guidelines, section V.

[190] See 40 CFR 51.308(f) (requiring subsequent regional haze plans to ''evaluate and reassess all of the elements required in paragraph (d)'', i.e., RP and LTS requirements, but not BART).

[191] See 70 FR 46159.

State's interpretation, as set out in the two smelters' Title V permits, the NSPS requirements do not apply to all of the BART sources' emissions.[192] The permits also contain ''permit shields'' that limit the independent enforceability of the NSPS requirements, except to the extent that they are specifically listed in the facilities' Title V permits.[193] Therefore, NSPS provisions in the copper smelters' permits do not apply to all subject-to-BART emissions at the smelters and do not satisfy the requirements of the Act or the RHR. By contrast, the Miami Smelter's Title V Permit does not restrict the applicability of the NESHAP requirements to the acid plant.[194] Nonetheless, in order to ensure that the requisite emission limits and enforceability requirements are included in the applicable implementation plan, we are incorporating the applicable NESHAP requirements by reference as part of the final FIP for the Miami Smelter.

5. Other Comments

Comment: FMMI requested that EPA extend its proposed compliance deadline for the Miami Smelter until at least 2018. FMMI noted that ''entities in many regulated industries anticipate undertaking significant engineering and construction projects in the near term to comply with regulations promulgated to implement new 1-hour NAAQs'' and that ''the high volume of this work could lead to a shortage of skilled laborers to complete the necessary construction to install pollution control equipment.'' Accordingly, FMMI asked that EPA extend the proposed compliance deadline to 2018. AMA also asserted that EPA should extend the compliance deadline in the rule for the Miami Smelter.

Response: We partially agree with this comment. Following the close of the public comment period, FMMI submitted the construction schedule for its planned SO_2 control upgrades. The schedule indicates that FMMI will conclude construction of the roofline capture system and aisle scrubber by March 2017.[195] FMMI also indicated that a shakedown period is necessary to ensure that the capture system and scrubber can meet the requirements of the FIP.[196] Based on the additional information provided by FMMI, we agree that additional time beyond the proposed compliance deadline of three years from promulgation (i.e., roughly July 2017) is needed. However, because the averaging period for the BART limit for SO_2 has been increased from 30 days to 365 days, we do not agree that a full additional year is needed to comply with the requirements of the FIP. Therefore, we are extending the BART compliance deadline to January 1, 2018.

VII. Responses to Comments on EPA's Proposed Reasonable Progress Determinations

A. Comments on Phoenix Cement Clarkdale Plant

Comment: NPS expressed support for EPA's proposal to require emission limits for RP equivalent to SNCR to reduce NO_X at the Clarkdale Plant.

Response: We acknowledge NPS's support for the proposed RP determination. The final rule contains two compliance options: a 2.12 lb/ton emission limit calculated on a rolling 30-kiln-operating-day basis, and an 810 tpy limit calculated on a rolling 12-month basis. Both emission limits reflect the degree of emission reduction achievable with the installation and use of SNCR.

Comment: Earthjustice argued that SNCR can reach higher control efficiencies for NO_X than the 50 percent control efficiency assumed by EPA in the proposal. Earthjustice requested that EPA look more closely at the capabilities of SNCR and the specific performance of the control technology on other kilns, specifically those referenced by Earthjustice. Earthjustice asserted that such an examination would ensure that the final control efficiency selected to represent SNCR would be consistent with the actual performance of this technology at Kiln 4.

Response: We partially agree with this comment. Although the commenter notes that SNCR is capable of achieving 80 to 90 percent control in certain site-specific instances, these results typically represent the highest end of the range of SNCR performance. In addition, while such levels of control are attainable on a short-term basis, they are not necessarily consistently sustainable over longer periods, such as on a 30-day or annual basis. We note that the reports provided by Earthjustice assumed much lower control efficiencies (35 to 50 percent) for purposes of calculating cost-effectiveness, which is calculated on an annual average basis. Our use of 50 percent for the SNCR control efficiency in the BART analysis is not intended to indicate the maximum effectiveness of SNCR. Information submitted by the commenter, as well as information that we included in our proposed rulemaking, does indicate that SNCR technology is capable of achieving greater than 50 percent control efficiency at preheater/precalciner kilns under certain conditions. It is possible that a site-specific optimization program at Kiln 4 could identify operating parameters and conditions that could result in an SNCR control efficiency greater than 50 percent. As noted in our proposed rulemaking, the optimization report from the CalPortland Mohave plant indicates a range of SNCR efficiency between 30 and 60 percent for a preheater/precalciner kiln (the same type as Kiln 4 at the Clarkdale Plant). However, site-specific information is not available for the Clarkdale Plant. In the absence of information indicating the extent to which the design and operating conditions at higher performing kilns are similar to, or replicable at, the Clarkdale Plant, we do not consider it appropriate to base our analysis on the higher control efficiency values. In developing the SNCR control efficiency used in our analysis, we examined the most stringent level of control attributed to SNCR at other similar facilities (as a retrofit on preheater/precalciner kilns) in other regulatory actions. These results are summarized in our proposed rule, and indicate that a 50 percent control efficiency is the most stringent SNCR control efficiency that has been applied to a preheater/precalciner kiln in other actions. Accordingly, we have used a 50 percent control efficiency as the basis for cost and emission calculations for the Clarkdale Plant.

However, in response to concerns raised by Earthjustice and in order to ensure that performance of the SNCR system installed at the Clarkdale Plant is optimized, we are including in the final rule a series of control technology demonstration requirements.[197] In particular, PCC is required to prepare and submit to EPA: (1) A design report describing the design of the ammonia injection system to be installed as part of the SNCR system; (2) data collected during a baseline period; (3) an optimization protocol; (4) data collected

[192] In particular, the Title V permit for the Miami Smelter makes the 0.065 percent NSPS limit applicable to emissions from the acid plant, but not the remainder of the facility's emissions. ADEQ Title V Permit 53592 for Miami Smelter (2012), Attachment B section IV.C.1.a.

[193] Id. section IV.C.4.

[194] See, e.g., id; section I.C (40 CFR Part 63 Subpart QQQ General Requirements), VI.A (Smelter Fugitives, Particulate Matter and Opacity).

[195] Miami Project Execution, schedule provided to EPA by FMMI, at a May 13, 2014 teleconference.

[196] Phone call between FMMI and EPA (May 28, 2014).

[197] These requirements apply only if PCC chooses to comply with 2.12 lb/ton rolling 30-kiln operating day limit for NO_X, rather than the 810 tpy 12-month rolling limit.

during an optimization period; (5) an optimization report establishing optimized operating parameters; and (6) a demonstration report including data collected during a demonstration period. While this type of control technology demonstration is not typically required as part of a regional haze plan, we consider it to be appropriate here, given the significant variability in control efficiencies achievable with SNCR at cement kilns. Based upon the data collected, EPA may revise the lb/ton emission limit in a future notice and comment rulemaking action.

Comment: PCC said that it supports the alternative of a cap on NO_X emissions for Kiln 4 of 810 tpy on a rolling 12-month basis, effective December 31, 2018. However, PCC conditioned its support on the final FIP expressly providing PCC with the option to select either the cap or the output-based emission limit by the deadline of December 31, 2018. Otherwise, PCC opposed a cap on NO_X emissions for Kiln 4 on the grounds that EPA is not authorized by law to impose a mass cap in lieu of an emission limit. PCC also requested that the FIP provide PCC with the option to switch compliance scenarios after December 31, 2018, pursuant to either an alternative compliance scenario provision in the FIP or a similar provision in the facility's Title V permit. PCC stated that this approach would best address the continuing fiscal impacts on the SRPMIC that will result from the FIP.

Response: As explained in an earlier response, we disagree that the RHR precludes EPA from establishing a source-specific annual emission cap for the purpose of achieving emission reductions to ensure reasonable progress. In the final rule, we are including provisions for both mass cap and an output-based emission limit, and are providing PCC with a deadline of June 30, 2018, to decide on the emission limit with which it will demonstrate compliance by December 31, 2018.

Comment: PCC and ADEQ asserted that EPA's assessment of baseline visibility impacts attributable to PCC is based on inappropriate assumptions. In particular, PCC commented that EPA's CALPUFF modeling is based on a NO_X emission rate calculated using the maximum rated capacity of PCC's Schenck feeder, a backup feeder that is never used unless the primary feeder is down for repair or maintenance. Therefore, the NO_X emission rate used in the modeling is not representative of actual or reasonably foreseeable conditions. EPA should re-propose the FIP using a more realistic NO_X emission rate in the modeling, or else revise the model outputs accordingly in the final FIP.

PCC also stated that EPA's CALPUFF modeling is based on a NO_X emissions factor that was different from that used in EPA's cost analysis. In the cost analysis, EPA used ''[a]nnual baseline emissions . . . calculated using the average of the lb/ton NO_X emissions factors . . . observed over a 2005 to 2010 timeframe.'' For the CALPUFF modeling, EPA used the highest NO_X emissions factor (3.69 lbs/ton) that corresponds to the year 2008. PCC asserted that EPA should re-propose the FIP to harmonize the two approaches or revise the model outputs accordingly in the final FIP.

Response: We disagree that the NO_X emission rate used in the modeling is unrealistic and unrepresentative of actual or reasonably foreseeable conditions. With regard to the emissions factors used for calculating the costs of compliance, we have determined costs of compliance on an annual average basis, with costs and emissions calculated on an annualized basis (e.g., dollars/year, tons emitted/year, tons removed/year), as recommended in the BART Guidelines.[198] With regard to visibility modeling, while visibility improvement is not listed in the CAA or RHR as a required factor for evaluating individual RP sources, we consider it to be relevant and have therefore considered it as a supplemental factor in our RP analyses. In general, we have used the same modeling approach for RP sources as for BART sources, as we consider this to be a reasonable means of assessing visibility benefits from potential controls at specific sources. In particular, since the visibility modeling examines improvement on certain days, emission rates used in visibility modeling correspond to daily emission rates. As described in the BART Guidelines, pre-control (baseline) model emission rates for BART sources use the 24-hour average actual emission rate from the highest emitting day over a specified baseline period.[199] For cement kilns, actual emission data are either not recorded on a daily basis, or are not publicly available. As noted in the TSD for the proposed rulemaking, baseline emissions for the Clarkdale Plant were developed primarily from information contained in annual emission inventories reported to ADEQ. Since these reports provide only total annual emissions and annual average emissions factors (lb/ton clinker), it is not possible to identify the highest emitting day based on this information. As a result, the single highest annual average emission factor (lb/ton clinker) was used in combination with short-term production capacity (ton clinker/day) in order to estimate a short-term emission rate (lb/day) that is representative of the highest emitting day. As noted in the model emission spreadsheet included in the docket for the proposed rule,[200] the maximum 24-hour average NO_X emission rate used for the baseline is 645 lb/hour, or about 7.75 tons/day. A summary of calculated daily NO_X emissions for the Clarkdale Plant is now included in the docket for this final rulemaking. As seen in these emission data, there were 12 days between 2005 and 2010 in which daily emissions were higher than the modeled baseline emission rate, ranging from 7.77 tons/day to 11.91 tons/day. Since the Clarkdale Plant has emitted at rates greater than those modeled in the baseline scenario, we disagree that the baseline NO_X emission rate we selected is unrepresentative of actual or reasonably foreseeable conditions.

Regarding the use of the Schenk feeder's capacity in emission calculations rather than the primary feeder's capacity, we note that the primary feeder's capacity is specified as simply ''NA'' in the Clarkdale Plant's Title V permit. Furthermore, this information was not provided by ADEQ or PCC in their comments or any other communication with EPA over the last 18 months.[201] In addition, while PCC has stated that use of the primary feeder's capacity, combined with other revisions to emission calculations, could result in 25 percent lower NO_X emissions, it has not provided supporting data to justify this claim, such as the primary feeder's capacity. The modeled baseline emission rate is within the range of actual emissions reported for the Clarkdale Plant, as noted in the previous paragraph. Thus, we consider that 645 lb/hour is a

[198] See *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program* (June 1, 2007) (''RP Guidance'') section 5.1 (recommending use of BART Guidelines and CCM for calculating costs of compliance for stationary sources); BART Guidelines, 70 FR at 39166–68 (Impact analysis part 1: How do I estimate the costs of control?).

[199] 70 FR 39170.

[200] *D-06c-AZ_RP_sources_all-Task9_2012-09-30.xlsx.*

[201] See, e.g. Summary of Communications and Consultation between EPA, Phoenix Cement Company (PCC), and Salt River Pima Maricopa Indian Community (SRPMIC) Regarding Potential Reasonable Progress (RP) Controls for Phoenix Cement Clarkdale Plant (January 27, 2014); Revision to the Regional Haze SIP for the State of Arizona with Technical Support Document (May 3, 2013); Attachments to the 2013 Arizona Regional Haze SIP revision (May 3, 2013).

representative characterization of the facility's baseline emission rate.

Comment: According to PCC, EPA post-processed its CALPUFF dispersion modeling results using IMPROVE Method 8b to compute extinction and delta deciview impacts attributable to the Clarkdale Plant's NO_X emissions. PCC said that EPA should re-propose the FIP to solicit comments on the applicability of Method 8b for the RHR, or propose its understanding of how best to assess source-specific visibility impacts in a separate notice and comment rulemaking, before it uses Method 8b in the regional haze context. In the alternative, EPA could issue a separate notice-and-comment rulemaking to explain the Agency's understanding of how best to assess source-specific visibility impacts using Method 8b before EPA uses Method 8b to impose legal obligations on the regulated community.

Response: The details of our visibility analyses are in the TSD and the public has had ample opportunity to comment on these analyses through the notice and comment process on our proposal. With regard to use of Method 8b in particular, the ''8'' in ''8b'' refers to ''method 8'' in CALPOST, a post-processor for the CALPUFF model, and indicates that CALPOST uses the revised IMPROVE equation for calculating visibility impact from pollutant concentrations (as opposed to ''method 6'' which specifies the original IMPROVE equation). The ''b'' refers to natural conditions on the 20 percent best days (as opposed to ''a'' for annual average natural conditions). As explained in our TSD, ''Method 8 is currently preferred by the [FLMs]'' and use of ''b'' (best 20 percent) is ''consistent with initial EPA recommendations for BART [and] current [FLM] guidance for assessing visibility impacts at Class I areas.'' [202] The commenter has not asserted or provided any evidence that EPA's reliance on method 8b is unreasonable or that use of another method is preferable in this instance. Therefore, we do not agree that any further notice and comment process is needed to evaluate our assessment of source-specific visibility impacts.

Comment: PCC noted that CALPUFF ''is nominally for great distances and, therefore, assumes the NO component of NO_X emissions is fully converted to NO_2 that is then 'available to form visibility-degrading particulate nitrate.' '' However, PCC is ''only 10.5 km'' from Sycamore Canyon Wilderness Area (SCWA), the nearest and most affected Class I area. PCC stated that EPA's sensitivity analysis is arbitrary and does not appear to support EPA's proposal to impose an SNCR-based standard on the Clarkdale Plant, given the significant reductions in SNCR-related visibility benefits in the SCWA that would result from lower NO–NO_2 conversion rates. PCC stated that EPA should re-propose the FIP using photochemical modeling to determine appropriate estimates of NO-to-NO_2 and NO_2-to-NO_3 conversions, the nitrogen species' effects on visibility in the SCWA, and the improvement in visibility that would result from the use of SNCR at the Clarkdale Plant.

Response: NO is converted to NO_2 and NO_3^- by oxidants such as ozone. This conversion takes some time, since the plume from the facility does not instantly mix into the ambient air containing oxidants. We agree with the PCC that NO emitted by the Clarkdale Plant may not fully convert to NO_2 by the time it reaches the nearby SCWA, and therefore may not fully form visibility-impairing nitrate (NO_3^-). However, we disagree CALPUFF can only be used to model great distances, that our sensitivity analysis is arbitrary, or photochemical modeling is necessary in this instance. PCC stated that CALPUFF ''is nominally for great distances.'' It is true that we promulgated CALPUFF with distances greater than 50 km in mind.[203] However, we also approved it for situations with complex wind situations, and specifically recommended CALPUFF for regional haze analyses. EPA's *Guideline on Air Quality Models* states that CALPUFF (Section A.3) may be applied when assessment is needed of reasonably attributable haze impairment or atmospheric deposition due to one or a small group of sources.[204] Further, the BART Guidelines provide that in situations where one is assessing visibility impacts for source-receptor distances less than 50 km, one should use expert modeling judgment in determining visibility impacts, giving consideration to both CALPUFF and other EPA-approved methods.[205] In this instance, we consider CALPUFF to be the most appropriate EPA-approved method, but have also conducted additional analyses to account for the limitations of CALPUFF at distances less than 50 km.

In particular, we acknowledge that CALPUFF's assumption that NO is totally converted to NO_2 and NO_3 might not be warranted for all circumstances. NO is converted to NO_2 and NO_3 by oxidants such as ozone. This conversion takes some time, since the plume from the facility does not instantly mix into the ambient air containing oxidants. The Clarkdale Plant is only 6.5 miles from the SCWA. We explored this issue in our proposal in the form of a sensitivity analysis described in the TSD [206] and an associated spreadsheet.[207] We scaled the nitrate portion of the visibility impact of the Clarkdale Plant on SCWA to reflect NO-to-NO_2 conversion rates ranging from 10 percent to 100 percent. We used 10 percent as an absolute lower bound because typically 10 percent of emitted NO_X (the sum of NO and NO_2) is already in the form of NO_2, but we consider 25 percent a more reasonable assumption, since there is time for some conversion during the plume's travel to SCWA. We disagree that this analysis is ''arbitrary'' as asserted by PCC, because it covers the full range of possible conversion rates, as shown in Table 7.

TABLE 7—SYCAMORE CANYON VISIBILITY BENEFIT FROM SNCR ON CLARKDALE CEMENT PLANT AS A FUNCTION OF NO CONVERSION [208]

	NO to NO_2 Conversion				
	10%	25%	50%	75%	100%
Base Visibility Impact (dv)	1.17	1.94	3.13	4.19	5.14
Visibility Impact with SNCR (dv)	0.92	1.42	2.07	2.68	3.30

[202] TSD at 13–14.

[203] ''Revision to the Guideline on Air Quality Models: Adoption of a Preferred Long Range Transport Model and Other Revisions'', 68 FR 18440, April 15, 2003.

[204] 40 CFR Appendix W, *Guideline on Air Quality Models* section 7.2.1.e. at the time of promulgation, 68 FR 18440, April 15, 2003; later moved to section 6.2.1.e, 70 FR 68218, November 9, 2005.

[205] 40 CFR part 51, appendix Y, IV.D.5. or 70 FR 39170.

[206] TSD section IV.C.3, p.109.

[207] Docket spreadsheet PhoenixCement_vis_NO2conv.xlsx.

TABLE 7—SYCAMORE CANYON VISIBILITY BENEFIT FROM SNCR ON CLARKDALE CEMENT PLANT AS A FUNCTION OF NO CONVERSION [208]—Continued

	NO to NO_2 Conversion				
	10%	25%	50%	75%	100%
Improvement (dv)	0.25	0.52	1.06	1.51	1.85

We also disagree that we must use photochemical modeling for this visibility assessment. The range of NO conversion rates assumed in our sensitivity analysis already spans whatever rate would be derived using a photochemical model. As noted in our proposed rule, considering that SNCR is very cost-effective in this instance, we consider a benefit of 0.25 dv at a single Class I area to be sufficient to warrant SNCR as a control for RP. Given that SNCR is warranted for any conversion rate, photochemical modeling would not alter our decision. Even if we were to perform such modeling, it would be strongly dependent on the background concentration of ozone and other oxidants in the local area for which no ozone measurements are available. The two ozone monitors nearest to the Clarkdale Plant are both about 28 miles away at Prescott to the southwest and in the opposite direction at Flagstaff.[209] One might also use modeled ozone, derived from photochemical modeling of NO_X and VOC sources over a large area, but such an estimate would have its own uncertainties. For example, the results may not be sufficiently precise at the 6.5-mile scale in question to provide an accurate ozone background. Therefore, we do not agree that photochemical modeling is preferable to CALPUFF or required in this instance.

Comment: PCC stated that EPA's conclusion that SNCR should be considered the basis of an RHR standard for the Clarkdale Plant is without reference to a decision-making threshold. EPA stated that ''the benefit of SNCR remained substantial even for the lowest (NO–NO_2) conversion assumption.'' However, PCC stated that EPA does not state or justify what visibility benefit is ''substantial'' enough to warrant imposition of RHR control technology-based standards on a BART-ineligible source. In PCC's case, PCC stated that EPA does not explain or justify how low the improvement in visibility would have had to go before EPA would have decided the visibility benefits are not ''substantial'' enough to impose a standard based on SNCR. Absent this, PCC believes EPA's decision to impose on PCC a standard based on SNCR is arbitrary. PCC stated EPA should re-propose the FIP to provide such explanation and justification for public comment, or provide them in the final FIP.

Response: We do not agree with this comment. The RHR does not require the development of specific thresholds for any of the RP factors. If 100 percent NO–NO_2 conversion is assumed, SNCR is expected to reduce Kiln 4's visibility impact at SCWA from 5.14 dv to 3.30 dv, resulting in a benefit of 1.85 dv, which is quite large.[210] Assuming only 10 percent conversion, SNCR is expected to reduce the Clarkdale Plant's visibility impact at SCWA from 1.17 dv to 0.92 dv, a benefit of 0.25 dv, which would still contribute to improved visibility.[211] Given that the four RP factors establish SNCR as a reasonable control for the Clarkdale Plant, we consider this visibility benefit sufficient to support installation of controls during this planning period. Indeed, because SNCR would reduce the facility's impact from more than 1 dv to less than 1 dv, the Clarkdale Plant would no longer cause visibility impairment at SCWA, but would instead only contribute to such impairment.[212]

Comment: PCC asserted that EPA used the wrong cost for ammonium hydroxide. PCC argued that the correct cost is $1,180/ton, not $1,000/ton, based on information PCC provided to EPA on December 20, 2013. PCC stated that EPA also used a 15 percent contingency on costs without reference to a promulgated rule for that percentage and without offering a reasoned justification of the use of that percentage generally or in PCC's case. PCC concluded that EPA should re-propose the FIP to include legally applicable inputs, explain why its inputs are not arbitrary, or revise its cost analysis accordingly in the final FIP. PCC added that EPA's analysis relied on EPA's CCM, which has no legal force because it has never been subjected to a notice and comment rulemaking. Therefore, PCC concluded that EPA should re-propose the FIP to eliminate its reliance on the CCM in PCC's case, or else adjust its determination for PCC in the final FIP to exclude all assumptions based on the CCM or justify such assumptions on their merits so that they are not arbitrary.

Response: We disagree with these comments. EPA's RP Guidance specifically recommends use of the CCM in evaluating the cost of controls for potentially affected RP sources.[213] While the CCM itself has not been subject to notice and comment rulemaking, our use of the CCM in this rulemaking has been subject to public notice and comment, and PCC has had ample opportunity to dispute all assumptions in our analysis.[214] In this instance, PCC provided its own SNCR cost estimate that also relied on information from the CCM for certain line items (such as direct and indirect installation costs), as well as internal cost estimates for other line items (SNCR purchased-equipment cost).[215] In our proposed rule, we accepted the majority of PCC's cost analysis and included all of the line items provided by PCC. In specific instances, where we found a particular line item cost to be excessive or unjustified, we revised the value provided by PCC in order to ensure a fair and meaningful comparison of costs between the Clarkdale Plant and other facilities. In no case did we entirely eliminate or disregard the cost of a line item provided by PCC.

In the case of reagent cost, PCC used a reagent cost of $0.59/lb (i.e., $1,180/ton), citing the cost-effectiveness analysis performed for the BACT analysis of the Drake Cement Plant's PSD construction permit in 2005. Based

[208] Id.

[209] See EPA's Air Quality System Database at *http://www.epa.gov/ttn/airs/airsaqs/*.

[210] Id.

[211] Id.

[212] See 70 FR 39120 (''States should consider a 1.0 deciview change or more from an individual source to 'cause' visibility impairment, and a change of 0.5 deciviews to 'contribute' to impairment.'').

[213] RP Guidance section 5.1.

[214] In addition to the public comment period on our proposed FIP, EPA previously provided PCC with two opportunities to review and provide feedback on our analysis for the Clarkdale Plant. See email from Colleen McKaughan, EPA, to Verle Martz, PCC (November 6, 2012); email from Charlotte Withey to George Tsiolis (December 11, 2013).

[215] F–42—2013–03–06 Comments from Phoenix Cement Co.pdf.

on the information provided by PCC, this estimate does not appear to have been updated or adjusted from its original 2005 estimate, nor has PCC explained why the estimate provided for a different plant is appropriate for the Clarkdale Plant. As noted in the proposed rule, we used a reagent cost of $1,000/ton, based on recent historical prices (about $500/ton) and increased it by a factor of two in order to account for potential fluctuations in ammonia prices over the 20-year useful life of the control equipment. Absent additional details from PCC indicating a more recent or site-specific justification for an ammonia cost of $1,180/ton, we consider our estimate of $1000/ton to be a reasonable and sufficiently conservative estimate for the price of ammonia.

In the case of cost contingency, we consider the 40 percent contingency suggested by PCC, without additional site-specific information to support it, to be excessive. The CCM uses contingency values ranging from five to 15 percent, depending upon the control device in question and the precise nature of the factors requiring contingency. We have used the upper end of this estimate in our cost calculation. In no instance does the CCM provide for a generic contingency value as high as 40 percent. We recognize, however, that retrofit installations may pose additional cost estimate uncertainty (i.e., cost contingency). Consequently, we have incorporated estimates of such additional costs at other facilities affected by our regional haze FIP actions.[216] In these instances, however, affected facilities provided greater detail regarding the additional costs, which we incorporated either as additional specific line items or as larger purchased equipment costs. We do not consider it appropriate to include these additional retrofit costs in a generic contingency value. Therefore, we are retaining the 15 percent contingency value.

Comment: PCC said that reliance on the EPA's CCM for the 20-year useful life presumption for amortization is inappropriate because the CCM was never subject to notice and comment rulemaking. PCC stated that the EPA should re-propose the FIP to eliminate its reliance on the CCM in PCC's case, or adjust its determination for PCC in the final FIP to exclude all presumptions based on the CCM, or justify such presumptions on their merits so that they are not arbitrary.

Response: We do not agree with this comment. EPA's RP Guidance recommends use of the CCM in considering the remaining useful life of potentially affected RP sources, and explains that ''the methods for calculating annualized costs in EPA's [CCM] require the use of a specified time period for amortization that varies based upon the type of control.'' [217] The CCM, in turn, provides that ''[a]n economic lifetime of 20 years is assumed for the SNCR system.'' [218] As noted in the previous response, while the CCM itself has not been subject to notice-and-comment rulemaking, our use of the CCM in this particular rulemaking has been subject to public notice and comment. PCC has had ample opportunity to dispute all assumptions in our analysis, including the 20-year amortization period. However, PCC has provided no evidence that our use of an equipment lifetime of 20 years is inappropriate in this instance. On the contrary, PCC submitted a four-factor analysis dated March 28, 2013, which states that Kiln 4 has a remaining useful life of roughly 50 years. Thus, there is no evidence in the record to suggest that an amortization period of less than 20 years is appropriate for capital costs of SNCR at Kiln 4.

Comment: Earthjustice disagreed with EPA's calculation of baseline emissions for Kiln 4, noting that the baseline value of 1,620 tpy employed by EPA is higher than actual annual emissions from 2005 through 2010. Earthjustice asserted that using baseline emissions that are higher than any of the baseline years is bad policy and bad precedent, and urged EPA to use the maximum of the actual observed emissions from the baseline period, which is 1,513 tpy in 2005.

Response: We disagree that the baseline emission rate should be adjusted in the manner suggested by Earthjustice. The challenges associated with accurately characterizing the baseline emissions for a source that exhibited such significant variation in cement production, annual emissions, and emission factors over the baseline period are documented in our proposed rule. We acknowledged in our proposed rule that our method marginally overstates the annual baseline emission rate. However, we do not consider the method proposed by Earthjustice, which involves using the maximum actual baseline value observed, to be a more accurate characterization of baseline emissions. We acknowledge that Earthjustice's method would result in a marginally lower annual emission limit,[219] but Earthjustice's method would also result in a higher lb/ton NO_X emission limit.[220] We do not consider the use of the maximum observed emission factor (lb/ton), which is the result of low levels of kiln production, as a realistic depiction of anticipated annual emissions from the source. Moreover, an adjustment of the baseline by this amount would not alter our determination that SNCR constitutes the appropriate RP control for Kiln 4.[221]

Comment: PCC noted an inconsistency between the proposed compliance date in the preamble applicable to the Clarkdale Plant, ''by December 31, 2018,'' and the compliance date in the proposed regulations, ''no later than (three years after date of publication of the final rule in the **Federal Register**).'' PCC stated that it needs the maximum flexibility that EPA can provide, and requested that the compliance date in the final rule be stated as ''no later than December 31, 2018.'' Similarly, ADEQ asserted that, given the difficulty of retrofitting Kiln 4 with SNCR, more than three years is necessary to demonstrate compliance. By contrast, Earthjustice commented that the proposed compliance time frame of 4.5 years to install SNCR on the kiln is too long, asserting that the proposed compliance deadline has no basis, and should be shortened to one year.

Response: EPA acknowledges that there is a discrepancy between the preamble and the regulatory language in the proposed FIP regarding the compliance date for the Clarkdale Plant. Unlike BART controls, which must be installed as expeditiously as practicable, RP controls are not subject to any particular compliance deadlines under the CAA and RHR, other than the overarching requirement to achieve reasonable progress during each planning period. PCC has indicated that it needs until December 31, 2018, to comply with any requirements of the FIP, which is also the end of the first planning period. While it may be technically feasible for the Plant to install SNCR before this date, we

[216] AEPCO Final Comments to AZ FIP_SIP_CBI included.pdf, C–37 Letter from Erik Bakken, TEP, to Greg Nudd, EPA, re TEP Sundt Modeling & Cost Information.

[217] RP Guidance section 5.4.

[218] CCM section 4.2, chapter 1, section 1.4.2, page 1–37.

[219] As a result of using a 1,513 tpy NO_X baseline emission rate instead of 1,620 tpy as described in the proposed rule.

[220] As a result of using a 3.69 lb/ton baseline emission factor instead of a 3.25 lb/ton emission factor as described in the proposed rule.

[221] Use of a 1,513 tpy baseline emission rate would result in an SNCR cost-effectiveness of $1,215/ton, rather than $1,162/ton in the proposed rule.

consider it appropriate in this instance to provide the facility until December 31, 2018. We have amended the regulatory text to require compliance with the NO_X emission limit and other NO_X-related requirements no later than December 31, 2018.

Comment: Earthjustice did not support revising the 30-day average emission limit in order to accommodate startup and shutdown events at the Clarkdale Plant. Earthjustice concluded that the proposed upward revision is not warranted. In contrast, PCC commented that the method EPA used to derive the 2.12 lb/ton emission limit is ''not unreasonable for being based on empirical data.''

Response: Under the CAA and EPA's implementing regulations, ''emission limitation'' is defined as a requirement which limits the quantity, rate, or concentration of emissions of air pollutants ''on a continuous basis.'' [222] Thus, the emission limits established in the FIP apply at all times, including periods of startup, shutdown, and malfunction. Malfunctions are, by definition, unforeseeable, and cannot be accounted for in setting emission limits. By contrast, startup and shutdown are part of normal operations, and must be included when establishing emission limits. As discussed in our proposed rule, the 30 percent upward revision from the annual emission rate to the 30-day lb/ton limit was based on an examination of daily emissions (lbs) and production (tons clinker) data over a multi-year period for cement kilns (operating without SNCR) in which we identified the highest rolling 30-day emission rate and the highest annual average emission rate, and examined the difference between these values. A similar approach was used to develop the rolling 30-day emission limits for TEP Sundt Unit 4, and a copy of the emission data is included in the docket.[223] Unlike the emission data for Sundt Unit 4, which are publicly available from EPA's CAMD, the data we examined for the cement kilns contain daily production information that is considered CBI and we are generally prohibited from making it available for public review. The method we applied in developing the 30-day emission limit for the cement plants, however, is the same as the method documented for Sundt Unit 4 that is available for public review. While alternative methods might exist to account for these emissions, we did not receive any comments describing any alternative or more refined approaches to address this issue. Accordingly, we are finalizing the emission limit of 2.12 lb/ton as proposed.

Comment: Earthjustice opposed setting an annual NO_X emission cap for the Clarkdale Plant's Kiln 4. According to Earthjustice, the cap is inexplicable because there is just the single kiln at the facility, and a cap is not needed. Earthjustice pointed out that EPA acknowledges that the facility can meet the cap without further controls. Earthjustice would support a combination of a unit-specific mass-based emission limit (e.g., ton/year or ton/day) and an output-based limit (e.g., lb/ton clinker) in some situations. Nevertheless, Earthjustice opposed the NO_X cap for Kiln 4 and urged EPA not to adopt the cap in the final rule.

Response: We disagree with this comment. The RHR does not preclude the establishment of an annual emission limit [224] for the purpose of achieving emissions reductions for reasonable progress. As proposed, an annual NO_X emission limit of 810 tpy represents a 50 percent reduction, consistent with the use of SNCR, relative to baseline emissions. In addition, we note that while the RHR does require the consideration of specific control technologies and emission reduction systems in BART and RP analyses, the emission limits established pursuant to the RHR do not specifically require the application of a specific control method or technology.[225] Although the emission limit itself is based on the reductions achievable from a considered control option, the source is not required to install a specific technology to demonstrate compliance with the limit, and may pursue other means of meeting the limit. In this instance, PCC may elect to comply with the 810 tpy NO_X limit by installing SNCR, or may elect to limit cement production to about half of pre-2008 production levels.

Comment: Earthjustice noted that EPA considered two BART controls options, SCR and SNCR, but that EPA rejected SCR as technically infeasible. Earthjustice disagreed with this decision, and provided information asserting that while SCR systems have proven impractical due to operational reasons at several European kilns, that is not the same as technical infeasibility. Earthjustice asserted that SCRs can work in cement kilns, but require additional maintenance that may impact the cost of the controls. However, because EPA did not do any cost analysis, Earthjustice asserted that it is impossible to state with certainty that SCR is not cost-effective, which Earthjustice alleged is what is implied from EPA's discussion. Thus, Earthjustice stated that EPA should not have conflated technical infeasibility and economic infeasibility when it rejected SCR.

Response: We agree that SCR is technically feasible. We clarify that although SCR was not further considered after Step 2 (Eliminate Technically Infeasible Options) of the RP analysis, we consider SCR a technically feasible control option. While we explicitly eliminated other control options (e.g., mixing air technologies) in Step 2 as technically infeasible, we elected not to consider further SCR due to a lack of information that would allow us to evaluate its effectiveness and cost of controls on cement kilns. In particular, we note that SCR has not been commercially applied to a cement plant of any type in the United States, and there is little information available about its use on cement kilns in other countries.[226] Thus, we lack sufficient information to conduct a four-factor analysis for SCR on cement kilns.

B. Comments on CalPortland Cement Rillito Plant

Comment: CPC asserted that the four-factor analysis for the Rillito Plant must be done within the context of the RPGs. In the current litigation over EPA's FIP governing three subject-to-BART power plants in Arizona, CPC noted that the petitioners argued that EPA erred by disapproving Arizona's BART determinations without considering whether the Arizona RH SIP demonstrated reasonable progress. According to CPC, EPA asserted in response:

> Given that there is no statute or regulation plainly requiring EPA to consider source-specific BART determinations in the context of a state's overall ''reasonable progress,'' the State must demonstrate that EPA's approach was an unreasonable interpretation of EPA's own regulations.

Whether EPA is correct with respect to BART determinations, CPC asserted that 40 CFR 51.308(d)(l) and (d)(l)(A) plainly require EPA to consider source-specific reasonable progress factors in the context of establishing RPGs. CPC concluded that EPA should not, and cannot, take a position in this matter

[222] 42 U.S.C. 7602(k), 40 CFR 51.100(z).

[223] See spreadsheet labeled ''E–45—TEP Sundt4 2001–12 Emission Calcs 2014–01–24.''

[224] Although the term ''cap'' was used to describe the limit on Kiln 4, the commenter is correct to note that only Kiln 4 is subject to the ''cap.'' The ''cap'', therefore, essentially functions as an emission limit for a single emission unit.

[225] We note, for example, that per 40 CFR 51.301 (Definitions), BART represents an emission limit, not necessarily a requirement to install a specific control technology.

[226] See TSD at 92–93.

that is patently inconsistent with its position currently pending before the Ninth Circuit Court of Appeals.

Response: We do not agree that our action here is in any way inconsistent with our Phase 1 action or our brief defending that action. Furthermore, while we agree that the RHR requires consideration of the RP factors in the context of setting RPGs, we do not agree that our proposed FIP failed to comply with this requirement. The RPGs are analytical benchmarks that reflect the visibility improvement at each Class I area that is estimated to occur by the end of the planning period on the 20 percent best and worst days after all reasonable control measures, including both RP determinations and BART determinations, have been implemented. In our proposed FIP, we proposed RPGs for Arizona's Class I areas that reflect the combination of control measures included in the approved portions of the Arizona RH SIP (Phases 1 and 2), the partial Arizona RH FIP (Phase 1), and the proposed partial Arizona RH FIP (Phase 3) that we are finalizing today with some modifications.[227] In addition, as explained elsewhere in this notice, we are now quantifying (in deciviews) the RPGs for each Class I area.

Comment: CPC stated that the estimated cost per dv improvement for Kilns 1–3 in Table 43 of the proposal notice does not reflect the cost for all three kilns. According to CPC, the Table 43 figures improperly compare the annual cost of SNCR at one kiln with the cumulative visibility improvement from requiring SNCR at all three kilns. CPC asserted that, based on EPA's estimates, the corrected values would be $4.5 million/dv (cumulative improvement) and $14.3 million/dv (maximum improvement). CPC also stated there are several errors in the proposed FIP's visibility modeling for Kilns 1–3.

Response: We agree that Table 43 reflects the annual cost of SNCR for one kiln, compared to the cumulative visibility improvement from requiring SNCR at all three kilns. However, this error had no impact on our proposed determination that no controls should be required for Kilns 1–3 at this time. Making the change suggested by CPC would further support this determination by increasing the $/dv value for SNCR at Kilns 1–3. Likewise, making the alterations in the modeling as suggested by CPC would not alter our determination that no controls are reasonable for Kilns 1–3 in this planning period.

[227] 79 FR 9363.

Comment: CPC stated that the proposed FIP underestimates ammonia costs (citing Exhibit 1 submitted with the comments). CPC stated that its total annual cost estimate, which differs from the proposed FIP's only due to vendor quotes and site-specific information for ammonia costs, is $1,348,084.

Response: As part of its comments, CPC provided an ammonia vendor quote of $1,336/ton (compared to our ammonia cost of $1000/ton in our proposed rule). We have revised the ammonia costs in our cost estimate based upon the vendor quote provided by CPC. This change, together with other revisions described below, results in a cost-effectiveness of $1,850/ton, which we consider to be very cost-effective.

Comment: Earthjustice and NPS indicated that they do not agree with EPA's assessment of the control efficiency of SNCR for Kilns 1–3, which they believe is higher than 30 percent. In Earthjustice's opinion, EPA randomly chose a 25 percent control efficiency for SNCR without explanation, despite the Agency's acknowledgement that the technology is capable of reducing NO_X by as much as 40 percent.

With respect to two other control options, Mid Kiln Firing (MKF) and Mixing Air Technology (MAT), Earthjustice noted similar concerns in that EPA simply accepted the 20 percent reduction from CPC's observed range of 11 to 55 percent NO_X reduction, again without support or justification. Better support must be provided, or EPA should select a higher control efficiency for these control strategies.

NPS agreed with EPA that it is not reasonable to require controls at the kilns that will not operate again, but noted that it does not agree with how EPA conducted the analysis to arrive at the decision not to require controls, particularly with regard to control efficiency assumptions, and emphasized that before the kilns begin operating, they should be reevaluated.

Response: As noted in the proposed rule, and as pointed out by the commenters, we relied upon information provided by CPC to estimate the control efficiencies of various control options being analyzed for Kilns 1–3, specifically LNB, SNCR, and MKF. The information provided by CPC indicated a range of performances for each option. However, the site-specific information available for Kilns 1–3 was insufficient to allow us to determine that the maximum control efficiency values within the performance ranges were achievable at the kilns. Consequently, we reasonably chose to use control efficiency values that fell within the middle of the respective performance ranges. While the commenters advocate for control efficiency values at the high end of the performance ranges, they have provided no new site-specific information to demonstrate that more stringent levels of control are achievable. Finally, we note that Kilns 1–3 are long-dry kilns, whereas Kiln 4 is a preheater/precalciner kiln. Given that more information is available regarding the control efficiency of SNCR on preheater/precalciner kilns, we were able to estimate a higher control efficiency for SNCR at Kiln 4 (50 percent) than we were able to at Kilns 1–3.

Comment: Earthjustice disagreed with EPA's decision to require no further controls for Rillito Kilns 1–3. EPA justified its determination based on the fact that the kilns have not operated over the last five years, and the relatively high cost of controls. Earthjustice argued that EPA's justification is inadequate because the kilns are not required to be permanently removed and an enforceable commitment from the company should be put in place if these units are to be exempt from RP controls. By contrast, CPC agreed with EPA that controls are not appropriate on Kilns 1–3 at this time.

Response: As noted in our proposed rule, we do not consider it reasonable to require RP controls on Kilns 1–3 given the relatively high cost of the control options and the fact that these kilns last operated in 2008, and have therefore not generated any emissions for the last five years. With regard to an enforceable shutdown date, we do not consider it appropriate to require the shutdown of these units. As noted in our proposed rule, if Kilns 1–3 resume production, they should be re-evaluated for RP controls by ADEQ during the next regional haze planning period.

Comment: Earthjustice disagreed with EPA's rejection of SCR as a technically feasible control technology for Kiln 4. Earthjustice argued that the technology can be used on kilns, but it may require additional maintenance, which includes more frequent catalyst changes. Earthjustice stated that this can have an effect on the cost of controls, but because EPA did not conduct a cost analysis, the conclusion cannot be drawn that SCR is definitely not cost-effective. Infeasibility due to cost should not have been equated with technical infeasibility, if that is what EPA has done.

Response: We agree that SCR is technically feasible. As noted in our responses regarding to comments concerning PCC's Clarkdale Plant, we

wish to clarify that although SCR was not considered after Step 2 of the RP analysis, we consider SCR to be a technically feasible control option. While we explicitly eliminated other control options (such as Mixing Air Technologies) in Step 2 as being technically infeasible, we elected to not further consider SCR further due to a lack of information that would allow us to evaluate its effectiveness and cost on cement plants. In particular, we note that SCR has not been commercially applied to a cement plant of any type in the United States and there is little information available about its use on cement kilns in other countries.[228] Thus, we lack sufficient information to conduct a four-factor analysis for SCR on cement kilns.

Comment: Earthjustice argued that EPA has not provided adequate support for the proposed 50 percent NO_X reduction at Kiln 4 using SNCR. Earthjustice acknowledged the existence of Table IV.B–7 in the TSD showing SNCR NO_X control efficiencies from different sources, but indicated that it could not tell based on the cited sources in that table that the test results would limit the control efficiency to 50 percent for Kiln 4 as well. Earthjustice indicated that SNCR performance is site-specific and can be optimized. Earthjustice said that the injection of ammonia or urea into an exhaust gas stream under certain conditions can reduce NO_X emissions significantly, but that the temperature range is important because at temperatures beyond a certain range, the reagent can oxidize to create NO, thereby increasing NO_X emissions. On the other hand, if the temperature is below a certain temperature range, the reaction rate is too slow for completion and the source might emit unreacted agent.

Reemphasizing the fact that the control efficiency of SNCR is variable and dependent on installation-specific variables, Earthjustice argued that it is possible to achieve NO_X reductions of 90 percent at cement kilns. Therefore, Earthjustice urged EPA to reconsider the 50 percent level of control and consider raising the control efficiency for Kiln 4 at Rillito. By contrast, NPS indicated that it agreed with EPA's estimate of 50 percent control efficiency for SNCR and believed this level of control is supported by estimates of 50 percent at similar kilns.

Response: We disagree that a 50 percent control efficiency estimate for SNCR is too low for the reasons provided in response to similar comments regarding PCC's Clarkdale Plant. In addition, in our proposed rule, we solicited comment regarding SNCR control efficiency on Kiln 4, and stated that if we receive additional information or data providing more site-specific information that justifies a different control efficiency at the Rillito Plant, we would revise our analysis accordingly. As noted later in our responses, CPC provided information regarding the design and operation of Kiln 4, and stated that only a 35 percent control efficiency was achievable. As described in greater detail below, we agree that 35 percent reflects an appropriate estimate of the degree of control achievable with SNCR at Kiln 4, and have revised our cost analysis to reflect a 35 percent control efficiency at Kiln 4.

However, in response to concerns raised by Earthjustice and in order to ensure that performance of the SNCR system installed at Kiln 4 is optimized, we are including in the final rule a series of control technology demonstration requirements. In particular, CPC is required to prepare and submit to EPA: (1) A design report describing the design of the ammonia injection system to be installed as part of the SNCR system; (2) data collected during a baseline period; (3) an optimization protocol; (4) data collected during an optimization period; (5) an optimization report establishing optimized operating parameters; and (6) a demonstration report including data collected during a demonstration period. While this type of control technology demonstration is not typically required as part of a regional haze plan, we consider it to be appropriate here, given the significant variability in control efficiencies achievable with SNCR at cement kilns. Based upon the data collected, EPA may revise the lb/ton emission limit in a future notice and comment rulemaking action.

Comment: CPC stated that the proposed FIP's estimate of 50 percent control of NO_X emissions using SNCR on Kiln 4 is inaccurate because it is based on feasibility studies at four other cement plants and data collection from an optimization protocol at CPC's Mojave cement plant. CPC asserted that for each of the four plants, the TSD incorrectly characterized them in Table IV.B–9 as ''a preheater/precalciner operating with existing combustion controls.'' According to the commenter, the Holcim Trident and Ash Grove Montana plants are long-wet kilns, which have fundamentally different combustion characteristics and emission profiles.

CPC added that, while initially estimating 30 percent control effectiveness for SNCR at Kiln 4, it had refined its analysis and determined that 35 percent control efficiency may be achievable, based on the data observed at Mojave and CPC's engineering judgment that accounts for the site-specific differences between the two kilns.

CPC stated that a critical difference between Kiln 4 and Mojave is that potential ammonia injection points at Kiln 4 are not within the optimum temperature range of 1,600 °F to l,900 °F. Moreover, CPC continued, because potential injection points at Kiln 4 are below the optimum temperature range, NO_X reduction reactions will be much slower, leading to less reduction of NO_X emissions. Another critical difference, according to CPC, is Kiln 4's unique modified loop calciner, which, due to its design, is less efficient at mixing exhaust gases and reagent than a cyclonic precalciner, such as the one at Mojave. CPC asserted that the inferior mixing in Kiln 4's modified loop calciner will impede the ability of the SNCR reactions to reduce NO_X concentrations. In addition, CPC stated that fuel combustion is less efficient in a modified loop calciner, which leads to significantly higher carbon monoxide (CO) and lower oxygen concentrations in Kiln 4's exhaust when compared to Mojave. Kiln 4 CO emissions are approximately ten times higher than at Mojave. CPC concluded that, collectively, these factors will reduce the potential NO_X control efficiency to no more than 35 percent for Kiln 4.

Response: In its ''Reasonable Progress Analysis for CalPortland Company Rillito Cement Plant Kilns'' dated May 2013, CPC estimated a 30 percent NO_X control efficiency, based in part on an SNCR optimization report for CPC's Mojave Plant in California. Emission data from this report, which CPC submitted to EPA on August 30, 2013, indicated a range of SNCR control efficiency of 30 to 60 percent at the Mojave Plant, depending upon operating parameters. Based on this information, and given the range of SNCR performance indicated from the first six months of Mojave Plant optimization protocol collection, we stated that the use of a 50 percent control efficiency for SNCR was appropriate for Kiln 4. We also noted that, if we received additional information or data providing more site-specific information that justified a different control efficiency at the Rillito Plant, we would revise our analysis accordingly.

As part of its comments on the proposed FIP, CPC submitted to EPA a

[228] See TSD at 92–93.

document entitled ''Evaluation of EPA's Reasonable Progress Analysis for Kiln 4 at CalPortland Company's Rillito Cement Plant dated March 2014,'' which, among other things, provided further information on the NO_X control efficiency that is assumed for applying SNCR to Kiln 4. This evaluation provided differences between Kiln 4 at the Rillito Plant and the cement kiln at the Mojave Plant that could lead to a lower NO_X control efficiency when applying SNCR to Kiln 4.

CPC stated that because of these differences, the SNCR NO_X control efficiencies obtained for the cement kiln at the Mojave Plant cannot be applied to Kiln 4 at Rillito. In addition to the differences cited above, CPC also stated in its March 2014 report that the emission data from the Mojave Plant are highly variable (due to the operational variability that is part of the optimization), and CPC has not determined what control efficiency or emission rate is appropriate to use as the basis for an emission limit for the Mojave Plant. Based on considered engineering judgment, CPC proposed that a 35 percent NO_X control efficiency would be an appropriate estimate for Kiln 4. Because we agree with the analysis in CPC's report, we are revising our analysis based on a 35 percent NO_X control efficiency for SNCR at Kiln 4. In addition, as explained above, we are including in the final rule a series of control technology demonstration requirements to ensure that performance of the SNCR system installed at Kiln 4 is optimized.

In our proposed rule, we proposed a 50 percent NO_X control efficiency using SNCR, with a corresponding emission limit of 2.05 lb/ton of clinker produced and a cost-effectiveness of $1,047/ton. A 35 percent control efficiency would result in a NO_X emission limit of 2.67 lb/ton of clinker produced and a cost-effectiveness of $1,850/ton. We consider $1,850/ton to be very cost-effective.

Comment: CPC stated that EPA should revise the proposed rolling 30-day emission limit for Kiln 4 to reflect more recent emissions data and 35 percent control efficiency for SNCR. CPC stated that the TSD for the proposed rule references an annual design value of 2.05 lb NO_X/ton clinker based on a pre-control emission rate estimate of 4.10 lb/ton, which omits data for 2011 and 2012. According to CPC, a six-year average based on the 2007 to 2012 time period yields a pre-control emission rate of 4.62 lb/ton. Over the 2009 to 2012 time period, the annual average emission rate has been 5.15 lb/ton.

CPC also stated that emission limits must account for changes in production rates that are a function of market forces beyond the company's control. CPC said that, to be achievable, any emission limit imposed must account for the inherently higher emission rates that occur during periods of reduced production. CPC stated that if an emission limit is based on 50 percent control efficiency and that level of control is not achievable, then the company will be at risk of an enforcement action, third party claim, and/or plant shutdown for failing to meet an unachievable standard.

Response: As noted above, we agree that 35 percent reflects an appropriate estimate of the degree of control achievable with SNCR at Kiln 4. Accordingly we are revising the 30-day rolling average for the NO_X emission limit at Kiln 4 from 2.05 lb/ton of clinker to 2.67 lb/ton of clinker. In addition, as explained above, we are including in the final rule a series of control technology demonstration requirements to ensure that performance of the SNCR system installed at Kiln 4 is optimized. If the data collected pursuant to these control demonstration requirements indicate that a different control efficiency is appropriate for this kiln, EPA may revise the lb/ton limit in a future notice-and-comment rulemaking action.

We do not agree that the lb/ton emission limit should be based solely on periods of reduced production. Such an approach does not ensure that the facility would achieve fully effective emission control during periods of full production, which exhibit lower lb/ton values. Conversely, a lb/ton limit based solely upon periods of full production would result in a low lb/ton value that may not be achievable during periods of reduced production. Although our baseline period did not include the most recent two years of data, it did incorporate emission data from periods of both full operation and reduced operation. As a result, we consider it to be a reasonable representation of baseline emissions. Therefore, we are not revising this value.

Comment: CPC stated that because Kiln 4 does not cause or contribute to visibility impairment, a source specific four-factor reasonable progress analysis was not necessary or appropriate. The commenter asserted that EPA, in its final partial approval/disapproval of the Arizona RH SIP, stated ''We are approving Arizona's BART threshold of 0.5 dv and its determination that West Phoenix Power Plant and the Rillito Cement Plant are not subject to BART.'' Thus, the commenter argued that if a facility was not required to undergo a five-factor BART analysis, it follows that the facility should not be required to undergo a similarly burdensome reasonable progress analysis either.

Response: We disagree that exemption from BART automatically exempts a facility from control for purposes of reasonable progress under the RHR. In this instance, EPA approved Arizona's determination to exempt Kiln 4 at the Rillito Plant from BART, but disapproved the State's reasonable progress analysis for point sources of NO_X. As part of our own analysis of point sources of NO_X, we identified the Rillito Plant as a potentially affected source because it had a Q/D value of 726, more than 70 times the threshold value of 10.[229] Furthermore, our modeling indicates that the plant causes visibility impairment at Saguaro National Park, where it has a baseline impact of 1.26 dv from all four kilns.[230] Therefore, we determined that a source-specific four-factor analysis was appropriate.

Comment: Earthjustice was not supportive of revising the 30-day average emission limit in order to accommodate startup and shutdown events. Earthjustice indicated that there is insufficient evidence in the record documenting the analysis referenced in the TSD[231] where EPA indicates it looked at emission factors over 2008 to 2011 for other preheater/precalciner kilns. Further, Earthjustice also questioned whether the data that EPA examined was with or without SNCR. In Earthjustice's opinion, if the data represented uncontrolled emissions, the variability would not remain the same after the installation of SNCR. According to Earthjustice, proper controls have the effect of reducing variability. Therefore, Earthjustice did not believe that the proposed 30 percent upward revision to the 30-day average was warranted or sufficiently documented in the record.

Response: As noted in our response to a similar comment for PCC's Clarkdale Plant, under the CAA and EPA's implementing regulations, an ''emission limitation'' is defined as a requirement which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.[232] Thus, the emission limits established in the FIP apply at all times, including periods of startup, shutdown, and

[229] See 79 FR 9352.

[230] TSD page 98, table IV.B–12

[231] The commenter cited the last paragraph on page 99 of EPA's TSD (EPA–R09–OR–2013–0588–0009).

[232] 42 U.S.C. 7602(k), 40 CFR 51.100(z).

malfunction. Malfunctions are, by definition, unforeseeable, and cannot be accounted for in setting emission limitations. By contrast, startup and shutdown are part of normal operations and emissions occurring during startup and shutdown must be accounted for when establishing emission limits.

As discussed in our proposed rule, the 30 percent upward revision was based upon an examination of daily emissions (lbs) and production (tons clinker) data over a multi-year period for cement kilns (operating without SNCR) in which we identified the highest rolling 30-day emission rate and the highest annual average emission rate, and examined the difference between these values. A similar approach was used to develop the rolling 30-day emission limits for TEP Sundt Unit 4, and a copy of the emission data was included in the docket.[233] Unlike the emission data for Sundt Unit 4, which is publicly available from EPA's CAMD Acid Rain database, the data set we examined for the cement kilns contains daily production data that is considered CBI, which we are prohibited from making available for public review. The methodology we applied in developing the 30-day emission rate for the cement plants, however, is the same as the methodology documented for Sundt Unit 4, which is available for public review. While there might be alternative methods to account for these emissions than the approach we adopted, we did not receive any comments describing any alternative or more refined approaches for addressing this issue. Accordingly, we have retained this methodology in establishing the emission limit in the final rule.

Comment: ADEQ said that, given the difficulty of retrofitting Kiln 4 with SNCR, more time is necessary to demonstrate compliance. ADEQ said that the three-year compliance time frame is not sufficient. By contrast, Earthjustice asserted that the compliance deadline should be shortened to one year.

Response: As noted in a response to a similar comment on PCC's Clarkdale Plant, unlike BART controls, which must be installed as expeditiously as practicable, RP controls are not subject to any particular compliance deadlines under the CAA and RHR, other than the overarching requirement to achieve reasonable progress during each planning period. CPC has indicated that it needs until the end of the first planning period that ends on December 31, 2018, to comply with any requirements of the FIP. While it may be technically feasible for the plant to install SNCR before that date, we consider it within our discretion and reasonable in this instance to provide the facility until December 31, 2018.

Comment: Earthjustice responded to EPA's request for comments on whether a NO_X emission cap should be set for the Rillito Plant. Earthjustice did not understand how EPA arrived at the proposed cap level and argued that the level is not commensurate with actual emissions data. The proposed level of 2,082 tpy would allow minimal to no control of NO_X at the plant, assuming that Kilns 1–3 do not operate. Therefore, Earthjustice asserted that it is unreasonable to propose a cap without a guarantee that the older kilns will permanently cease operation because this could mean no control at all for Kiln 4. Earthjustice suggested that the combination of a unit-specific mass-based emission limit (e.g., ton/year or ton/day) and process-based limits (e.g., lb/ton clinker) might be reasonable in some situations, but Earthjustice indicated that it is does not support the proposed cap.

CPC also expressed opposition to the annual emission cap. CPC stated that the proposed alternative NO_X emissions cap would require the permanent shutdown of Kilns 1–3, as installing SNCR on Kiln 4 would not be sufficient to meet the cap if the other kilns were operating. CPC noted that when Kilns 1–3 operate at full capacity, NO_X emissions from them exceed 1,900 tpy, so an annual cap of 2,082 tpy would require Kiln 4 to reduce emissions to around 150 tpy, which is more than a 90 percent reduction from current emission levels. CPC asserted that, because 90 percent control efficiency is not possible with SNCR, the only way it could meet this annual limit would be to permanently shut down at least two, and perhaps all three, of its smaller kilns.

Response: As noted in a response to a similar comment regarding PCC's Clarkdale Plant, the RHR does not preclude the establishment of an annual emission cap for the purposes of achieving emission reductions for reasonable progress. However, considering the issues raised by commenters, and the multi-unit nature of the proposed annual emission cap, we are not including the option of an annual emission cap for the Rillito Plant in the final rule.

Comment: CPC stated that the visibility modeling for Kiln 4 contains some errors and unsupported assumptions, leading to an overestimate of the visibility benefit due to SNCR, including assuming 50 percent control and inaccurately assuming constant background ammonia levels. CPC asserted that because modeling results are highly sensitive to the estimated ammonia value, the assumption of 1 ppb for winter greatly overestimates NO_X effects on regional haze. CPC stated that EPA used monthly background ammonia concentrations in the visibility modeling for the recently adopted Wyoming RH FIP and should do the same here given the available and representative monitoring data from the Chiricahua monitoring station, located less than 200 km from the Rillito Plant.

CPC also asserted that EPA's visibility modeling for Kiln 4 contains the following errors:

(1) The stack parameters in the worksheet labeled ''Stack Parameters'' are the parameters for Kiln 6 that was proposed for construction at the Rillito Cement Plant to replace Kilns I–4, but has not been constructed.

(2) EPA's contractor assumed a geometric mean diameter for coarse particulate matter of 0.48 microns in its CALPUFF modeling. Because coarse particles are larger than 2.5 microns in diameter, CPC's technical consultant, AECOM, assumed a geometric mean diameter of 6 microns.

(3) EPA's subcontractor used non-default minimum turbulence velocities sigma-v (SVMIN) and sigma-w (SWMIN) for each stability class over land and over water of 0.5 meter/second (m/s). According to comments in the subcontractor's CALPUFF modeling files, using the default values produced an error message. The only way to bypass the error and run the model to completion was to set SVMIN and SWMIN to 0.5 m/s. AECOM used the default values without encountering errors from CALPUFF.

Finally, CPC stated that AECOM reran the visibility modeling analysis using corrected and supportable inputs, demonstrating that the maximum visibility benefit from installing SNCR on Kiln 4 would be 0.15 dv, approximately seven times less than the human eye can detect. Citing the DC Circuit's decision in *American Corn Growers,* CPC stated that a source should not be required to spend millions of dollars for imperceptible visibility improvements.

Response: We partially agree with this comment. As explained above, we agree with CPC's assertion that a control efficiency of 35 percent is more appropriate for SNCR at Kiln 4 than our proposed efficiency of 50 percent. However, we do not agree that our use of the IQAQM default for background

[233] See spreadsheet labeled ''E–45—TEP Sundt4 2001–12 Emission Calcs 2014–01–24''.xlsx''.

ammonia of 1.0 ppb was improper. As explained in our response to comments from TEP on the BART determination for Sundt Unit 4, given the uncertainty and variability in ammonia values measured in Arizona, we consider the 1.0 ppb IWAQM default to be the most appropriate value to use here.[234]

We agree that we used the incorrect stack parameters. However, because these parameters have varying impacts on visibility benefits, this error had little effect overall. In particular, the lower stack height and smaller stack diameter tend to increase baseline visibility impacts and the visibility improvements due to controls, whereas the higher stack exit velocity and higher exit temperature tend to decrease visibility impacts and control benefits.

Similarly, the changes related to particle diameters have little effect on the modeling results because PM contributes only a few percent to the modeled visibility impacts. The changes related to default minimum turbulence velocities would tend to increase slightly atmospheric mixing and thus to reduce slightly pollution impacts and the benefit of controls. Overall, the effect of the changes to the modeling input parameter is much smaller than the change in SNCR control efficiency, and does not affect our control determination.

While CPC's comment cites the results of AECOM's modeling using variable ammonia background, AECOM also conducted modeling using constant 1.0 ppb ammonia background. As explained above, we consider use of constant 1.0 ppb ammonia background to be the most appropriate approach and we agree with CPC's other corrections to our contractor's modeling. Therefore, we accept the results of CPC's modeling using 1.0 ppb ammonia background as a generally reasonable estimate of visibility benefits expected from SNCR on Kiln 4. These results indicate that the benefit of SNCR at Kiln 4 would be somewhat less than EPA's modeling showed. In particular, EPA's modeling showed a benefit of 0.24 dv at Saguaro National Park, the area with the highest impact from Kiln 4, and a cumulative benefit over the 12 nearby Class I areas of 0.78 dv. By contrast, CPC's modeling showed a benefit of 0.18 dv at Saguaro National Park and a cumulative improvement of 0.59 dv.

Despite these decreased visibility benefits, EPA still considers SNCR to be reasonable for Kiln 4 for several reasons. First, as explained above, even with the revisions suggested by CPC in its comments, SNCR remains highly cost-effective at $1,850/ton. Second, even though the visibility benefits from SNCR at Kiln 4 at the Rillito Plant are lower than those expected to result from controls on other sources addressed in this FIP, they are not negligible, and together with controls on other sources now and in the future will achieve progress in improving visibility at multiple Class I areas. In particular, we note that, according to CPC's modeling, 12 different Class I areas will be improved, including Galiuro WA, for which the expected improvement is 0.16 dv, only slightly less than expected improvement of 0.18 dv at Saguaro National Park. Third, due to the close proximity of the Rillito Plant to the western unit of Saguaro National Park, there is significant uncertainty regarding the benefits of controls. In particular, EPA's modeling indicated that the benefit of SNCR at the western unit of Saguaro National Park (0.30 dv) is greater than the benefit at the eastern unit (0.24 dv), if 100 percent conversion of NO to NO_2 is assumed. EPA also conducted a sensitivity analysis to address the possibility that NO_x emitted from the Rillito Plant is not 100 percent in the form of NO_2. The results of this analysis are shown in Table 8.

TABLE 8—VISIBILITY BENEFIT AT WESTERN SAGUARO NP FROM SNCR ON RILLITO CEMENT PLANT AS A FUNCTION OF NO CONVERSION

NO to NO_2 Conversion	Conversion Rate				
	10%	25%	50%	75%	100%
Improvement (deciviews)	0.03	0.05	0.15	0.22	0.30

While we do not know for certain which of these scenarios is most realistic, it is worth noting that there also will be some benefit to the western unit of Saguaro, which is not directly reflected in the modeling provided by CPC.

Finally, we disagree with CPC's suggestion that human perceptibility of visibility improvement is a criterion for imposing controls for purposes of selecting source-specific controls for reasonable progress under the CAA and the RHR. No one control will be sufficient to achieve the visibility goals of the RHR. The effect of reasonable controls on the many contributing sources will cumulatively enable progress toward those goals.

Comment: CPC asserted that the reasonable progress analysis for Kiln 4 is inconsistent with EPA's analyses of other sources. CPC included a table comparing the proposed FIP's cost and visibility results for TEP Sundt Units 1–3 and CPC Rillito's Kiln 4, and concluded that for about the same annual cost, emission controls at Sundt would have a much greater beneficial impact on visibility at Saguaro National Park. CPC stated that the only factor that could explain this differential treatment is the ''cost/ton reduced'' metric, which the FIP estimates is higher for TEP Sundt than Rillito, thus demonstrating the limitations of the cost/ton reduced metric. CPC further stated that the FIP should not rely on this metric, which provides no insight on whether controls are cost-effective for achieving RPGs by improving visibility, the sole potential justification for establishing controls. With respect to TEP Sundt Units 1–3, CPC stated that EPA concluded ''the cost-effectiveness of ULNB is relatively high in light of the anticipated visibility benefit'' and argued that because the costs are similar and the visibility benefits are even smaller, the same conclusion must be reached for Kiln 4.

Concerning the reasonable progress analysis for El Paso's facilities and Pima County's Ina Road sewage plant, CPC included a table comparing the four-factor analyses for those facilities and Kiln 4. CPC asserted that there is no explanation or justification to support the proposed decision to require controls on Kiln 4, but not on these other sources. CPC noted that the cost of compliance is higher for Kiln 4 than the other sources, the time needed to comply is longer, energy and non-air quality impacts are equivalent, and the remaining useful life is assumed to be identical. CPC asserted that because the four factors set forth in 40 CFR

[234] Memorandum in docket, ''Full Technical Response to Modeling Comments for June 2014 Final Arizona Regional Haze FIP (Phase III),'' Colleen McKaughan and Scott Bohning, EPA, June 16, 2014.

51.308(d)(l) cannot justify this differential treatment, the proposed FIP justifies the decision to not require controls on these other sources based on a factor that is not listed in 40 CFR 51.308(d)(l), and stated that CPC should, and must, be treated equally, and no controls should be imposed during this first planning period.

Response: We do not agree with this comment. The CAA and RHR provide considerable discretion in how the four RP factors are weighed. Moreover, while the CAA and RHR explicitly require consideration of visibility improvement in BART analyses, they do not require consideration of such benefits for individual RP sources. Therefore, while we have taken visibility benefits into account as a supplementary factor, we have not weighed them as heavily for RP as we have for BART. Rather, we have placed more emphasis on cost, which is one of the enumerated statutory factors for RP analyses.[235] Accordingly, we do not agree with CPC's suggestion that we should consider $/dv as more important than $/ton in evaluating potential RP controls. Even with CPC's suggested modifications, the cost-effectiveness of SNCR at Kiln 4 ($1,850/ton) is two to four times less than the cost-effectiveness of controls at Sundt Units 1–3 ($4,400–$8,300/ton).[236] Accordingly, we do not agree that we are treating these units inconsistently.

With regard to El Paso's Compressor Station and Pima County's Ina Road sewage plant, we agree with the commenter that controls on these units would be more cost-effective than SNCR at Kiln 4, and that the results for the other three statutory factors are similar. However, we note that El Paso Natural Gas Company (EPNG) has asserted that EPA has underestimated the costs of compliance and time necessary for compliance.[237] Furthermore, as explained in our proposal, natural-gas engines similar to those at these facilities are dispersed throughout the State and it is not practical for EPA to control these sources. By contrast, the Rillito Plant is a single discrete facility for which SNCR is a cost-effective and otherwise reasonable control option. We also note that, while we do not have visibility modeling to gauge the impacts of the other facilities cited by CPC, the Q/D value for the Rillito Plant (a rough gauge of potential for visibility impairment) is more than ten times the Q/D value for any of the other sources. Under these circumstances, we consider it reasonable to require SNCR at the Rillito Plant and not to require additional controls at the compressor stations or the sewage treatment plant. We strongly encourage the State to consider development of a statewide rule to regulate natural-gas engines in the next planning period.

Comment: Arizona Rock Products Association expressed support for and incorporated by reference the comments of CPC and PCC.

Response: We have responded to CPC's and PCC's comments above.

C. Comments on Other Reasonable Progress NO_X Point Sources

Comment: NPS argued that SCR should be BART for APS Cholla Unit 1. NPS provided more details on the cost analysis for Cholla Unit 1, indicating that the calculated average and incremental cost-effectiveness values for SCR of $5,313/ton and $6,307/ton, respectively, are erroneously high. NPS noted that EPA's calculation methodology relied heavily upon IPM, and suggested several revisions and corrections to EPA's calculation that would have the effect of reducing the control costs. After applying the corrections, NPS concluded that an average cost-effectiveness of $5,263/ton is obtained which NPS considers to be reasonable. In addition, NPS provided its own set of cost calculations, relying primarily upon the cost equations contained in EPA's CCM. NPS estimated that the average cost-effectiveness of SCR is $4,353/ton, which is less than the values established by several states and EPA.

NPS also made similar comments about TEP Springerville Units 1 and 2. NPS asserted that EPA's estimates of SCR cost-effectiveness of $6,829/ton for Unit 1 and $6,085/ton for Unit 2 are erroneously high, and therefore the incremental cost-effectiveness of SCR over SNCR of $8,606/ton and $7,416/ton, respectively, are also too high. After applying the corrections discussed by NPS, average cost-effectiveness of $5,700 to $6,400/ton is obtained, which NPS considers to be reasonable. In addition, NPS provided its own cost calculations for Springerville Units 1 and 2, relying primarily upon the cost equations contained in EPA's CCM. NPS estimated that the average cost-effectiveness of SCR is $5,688 to $6,377/ton, which is less than the values established by several states and EPA for EGUs. Detailed calculations and analysis for Cholla Unit 1 and Springerville Units 1 and 2 are documented in Appendix C and E of NPS's submittal.

Response: We disagree with NPS's assertion that our calculations, based on IPM methodology, are overestimates. The revisions indicated by NPS consist primarily of lower urea/ammonia and catalyst costs. NPS made similar assertions regarding ammonia and catalyst costs in our analysis for TEP Sundt Unit 4. As described in our responses to those comments, we consider the values we used for ammonia and catalyst costs appropriate.

Regarding NPS's cost calculations that use the cost equations from the CCM (as opposed to using the information contained in IPM), we note that nothing in the RHR requires use of the CCM for calculating the cost of compliance for RP sources. Moreover, while EPA's RP Guidance recommends use of the CCM, it also allows for divergence from the CCM, provided that any difference from the CCM is documented.[238] In this and other RH rulemakings, we have not required strict adherence to the study level cost equations contained in the CCM, and have developed cost calculations based on a number of supplemental sources including certain site-specific data provided by the facility, vendor quotes, and information from other EPA rulemakings. As noted in our proposed rule and TSD,[239] IPM has been used by EPA in multiple regulatory actions, and we consider it an appropriate source of supplemental information.

Regarding the use of cost-effectiveness thresholds, we note that the examples cited by NPS consist of BART determinations and not RP determinations.[240] Given the differences between the BART factors and RP factors and the nature of the applicability criteria that would trigger BART and RP analyses,[241] we do not necessarily consider the cost-effectiveness and visibility benefit values from BART determinations to be directly comparable to RP analyses. Furthermore, the cost-effectiveness values that NPS finds reasonable are, in fact, higher than EPA has required for

[235] Our cost analyses also incorporate consideration of two other statutory factors: Remaining useful life and energy and non-air environmental impacts.

[236] See 79 FR 9358.

[237] EPNG Comment Letter at 1–2.

[238] See RP Guidance, section 5.1, note 23.

[239] TSD for the Proposed Phase 3 FIP, January 27, 2013, Page 19 of 233.

[240] We also note that while NPS refers to ''BART for Cholla Unit 1'', Cholla Unit 1 is, in fact, not BART-eligible and therefore not subject to BART. See 78 FR 46145.

[241] I.e., BART has very specific applicability criteria, and is a ''one-time'' analysis that is only performed on affected sources during the first planning period. The procedure for identifying candidate sources for RP controls is not as specific, may have more or less expansive criteria than BART, and can be potentially performed each planning period.

any BART source during this planning period.[242] While it may be necessary to require controls at this cost level for RP sources in future planning periods, we do not agree that this level of cost-effectiveness is reasonable at this time, given the significant emission reductions already achieved by BART and RP determinations during this planning period (see Table 12).

Comment: ADEQ expressed support for EPA's determination that it is not practical to control compressor stations due to their dispersed locations. Similarly, the owner of Williams and Flagstaff Compressor Stations (EPNG) said that it agreed with EPA's determination that it is not reasonable to require further controls at these two facilities. Even though EPNG supported EPA's decision, EPNG did not agree that the control technology, cost of compliance, and time to comply used by EPA in its analysis are appropriate.

Response: We acknowledge ADEQ's and EPNG's support on this issue. We note that our finding of impracticability with regard to the regulation of engines (including those found at compressor stations) only applies to regulation by EPA in this planning period. It does not apply to potential regulation by the State in future planning periods. Given the availability of cost-effective controls for these sources and the potential for significant emission reductions from a statewide rule applicable to such sources, we strongly encourage ADEQ to develop such a rule during the next planning period. We acknowledge the comments made by EPNG regarding our control technology analyses for the natural gas turbines, but have not revised our analysis at this time because it would not alter our determination not to control compressor stations at this time.

Comment: TEP, the owner of the Sundt and Springerville facilities, agreed with EPA's conclusion that additional controls are not required on Springerville Units 1 and 2 or Sundt Units 1–3 at this time. ADEQ similarly expressed support for the EPA's decision not to require low-NO_X burners for Sundt Units 1–3 because they are not cost-effective. TEP added that the same result would have been achieved if EPA had approved ADEQ's identical determination.

Response: We acknowledge TEP's support on this issue. We agree that, with regard to TEP Sundt Unit 1–3, our determinations are identical to those made by ADEQ. However, we note that, unlike ADEQ, EPA conducted a four-factor RP analysis for these units, as well as visibility modeling to evaluate potential visibility benefits, before concluding that no additional controls are reasonable at this time.

Comment: The owner of Tucson Compressor Station (EPNG) indicated that that the facility is no longer operating and should therefore be removed from the FIP.

Response: We appreciate the clarification. Our proposed FIP did not require any controls for this facility, so no revisions are needed.

D. Comments on Area Sources of NO_X and SO_2

Comment: Earthjustice argued that area sources should also be required to install reasonable progress controls. Earthjustice referred to an NPCA Report [243] that shows how Visibility Restoration Plans can help ensure that Class I areas achieve the glide path by 2064. The report indicated that Arizona's area sources are the largest contributors to visibility impairment at the Grand Canyon. Earthjustice noted that EPA looked at reasonable progress controls for area sources, but classified its analysis as ''limited in scope.'' Earthjustice explained that EPA identified the area source categories contributing the most to visibility impairment, but performed only a brief analysis because the inventories that were analyzed did not contain sufficient data (e.g., on the number, age, and design of the actual area sources). In Earthjustice's opinion, in order to conduct a thorough reasonable progress analysis in this case where there was limited information available, EPA should have obtained the data necessary to conduct a proper analysis. Further, Earthjustice said that the justification for no further controls based on no other regional haze SIP or FIP requiring controls on such sources primarily to ensure reasonable progress is not sufficient, because no other state had RPGs as poor as Arizona's.

Earthjustice highlighted the Visibility Restoration Plan that was submitted with the Earthjustice's public comments as a tool to help EPA in identifying other sources that impact visibility, and should be evaluated for reasonable progress controls. According to Earthjustice, the Visibility Restoration Plan could also be a helpful tool to the Agency by illustrating how a long-term strategy based on existing data can be developed to restore visibility by 2064. In Earthjustice's opinion, if the plan is adopted, this would assist states and EPA to implement the goals of the haze program's reasonable progress mandate.

Response: We do not agree that additional area source controls are reasonable for this planning period. According to our analysis, Arizona's area sources are typically the smallest contributor to anthropogenic nitrate and sulfate pollution at Arizona's Class I areas, including the Grand Canyon, where Arizona area sources contribute only 2.9 percent of the nitrate pollution and only 0.4 percent of the sulfate pollution.[244] EPA's analysis is based on source apportionment modeling conducted by the WRAP. As we note in the proposal, EPA has carefully evaluated that work and has determined it to be of sufficient quality to use in making policy decisions.

The NPCA Report suggests that the contribution of Arizona's area sources to haze at the Grand Canyon may be greater than indicated by our analysis. However, as acknowledged in the NPCA Report's Visibility Restoration Plan (VRP), there are significant limitations in the data on which the VRP is based.[245] Furthermore, the average apportionment provided in the VRP is based on the highest 10 daily-average $PM_{2.5}$ concentrations,[246] rather than the 20 percent most impaired days and the 20 percent least impaired days, on which RPGs are based. Therefore, the NPCA Report does not provide an adequate technical basis for revising our findings regarding the relative contribution of area sources at Arizona's Class I areas. Accordingly, for the reasons described in our proposal, we conclude that it is not reasonable to require additional controls on Arizona's area sources at this time.

Comment: EPNG said that it agrees with EPA's assessment that the potential visibility benefits from applying NO_X controls at natural gas compressor stations would be relatively small.

[242] See, e.g. BART EGU FIP Summary.

[243] National Parks Conservation Association, *On an Approach for Improving Visibility in Class I Areas Using Visibility Restoration Plans (VRPs) with an Example VRP for the Grand Canyon National Park* (2014). Exhibit 17 in Earthjustice's comments. Hereafter ''NPCA Report''.

[244] See 79 FR 9362, Tables 53 and 54.

[245] NPCA Report, section C.2 at 10 (''While we have currently accepted these findings for the purposes of developing the example VRP for the GCNP, the accuracy of these findings is questionable and a thorough analysis of the many emission inventories and modeling assumptions made in the WestJump study would be a necessary task in developing an actual VRP for any Class I area'').

[246] NPCA Report, Attachment B Development of Extinction Source Apportionment Data for the Visibility Restoration Plan, Particulate Matter Species Apportionment (''The average apportionment during the highest ten daily-average $PM_{2.5}$ concentrations was created for the six PM species corresponding to the six pollutants that account for the controllable contributions to B_{ext} (PMC, EC, NO_3, SOA, SO_4, and $PM_{2.5}$)'').

Response: We agree with this comment on a per-engine basis, but we strongly encourage the State to consider development of a statewide rule to regulate the categories of natural gas engines and sewage treatment plants in the next planning period.

E. Comments on Reasonable Progress Goals and Uniform Rate of Progress

Comment: Two commenters objected to the lack of numerical RPGs, expressed in deciviews, in EPA's proposed FIP. CPC asserted that because EPA disapproved Arizona's RPGs, EPA is required to establish its own RPGs, under 40 CFR 51.308(d). CPC noted that there is no statutory or regulatory provision that excuses compliance with 51.308(d)(1) due to time and resource limitations. CPC added that EPA would not approve a SIP that did not include numerical RPGs. For these reasons, CPC asserted that the FIP cannot be approved as proposed.

CPC also stated that there is no statutory or regulatory support for EPA's assertion that emission limitations are more critical components of an RH plan than RPGs. CPC stated that establishing RPGs, not emission limits, is the first ''core requirement'' listed in 51.308(d), and that other components, including emission limits established as part of an LTS, must be developed in consideration of RPGs.

CPC stated that future RH plans will be unable to comply with 40 CFR 51.308(f), (g), and (h) unless numerical RPGs are established now. Citing 40 CFR 51.308(f)(2) and (3), CPC noted that Arizona must evaluate the effectiveness of its LTS for achieving RPGs and affirm or revise its RPGs as part of the next 10-year RH SIP. CPC also noted that Arizona must submit a report to the Administrator every five years evaluating progress toward RPGs. CPC stated that such provisions are predicated on the establishment of numerical RPGs and that without this, the proposed FIP does not comply with the RHR today and prevents Arizona from complying with the RHR in the future.

Earthjustice also asserted that EPA should quantify its RPGs. Earthjustice stated that EPA's contention that it has limited time and resources to conduct this task is not justified because Arizona completed its analysis within months of EPA's request. Earthjustice further pointed out that EPA did analysis to determine RPGs in other haze FIPs, such as Hawaii and Montana. Earthjustice also found EPA's claim of insufficient time and resources weak considering the multiple extensions it has received on the consent decree deadlines to complete the FIP. Therefore, Earthjustice asserted that EPA's claim is not warranted and the Agency should have conducted this critical analysis. Earthjustice strongly urged EPA to conduct this analysis during this rulemaking to meet the RHR requirements and for the purpose of identifying emission reductions needed for future planning periods. Earthjustice contended that EPA and the public must have this information available in order to determine how progress will be made and how reasonable EPA's plan is.

Response: We agree that, having disapproved Arizona's RPGs, EPA is required to establish new RPGs under 40 CFR 51.308(d). Therefore, we proposed non-quantified RPGs consistent with the combination of approved control measures in the Arizona RH SIP, the Phase 1 RH FIP, and the proposed Phase 3 RH FIP.[247] We explained that ''[w]hile we would prefer to quantify these proposed RPGs for each of Arizona's 12 Class I areas based on the new State and Federal plans, we lack sufficient time and resources to conduct the type of regional-scale modeling required to develop such numerical RPGs.'' [248] The commenters underestimate the difficulty and time required for this task. While Earthjustice points to the effort of Arizona to provide for new RPGs, the State's effort was based on an extrapolation of historical monitoring trends into the future without any evaluation of whether these trends could reasonably be expected to continue through 2018.[249] Further, the RPGs that EPA promulgated for Hawaii and Montana are not directly comparable to the situation in Arizona. For Montana, EPA relied on WRAP modeling to set RPGs without updating the modeling to reflect additional controls included in the FIP.[250] For Hawaii, EPA employed unique, island-specific emission inventories to develop RPGs.[251]

Development of more refined numerical RPGs for each of Arizona's 12 Class 1 would require photochemical grid modeling of a multistate area, involving thousands of emission sources, unlike the comparatively simple single-source CALPUFF modeling used for individual BART assessments. In order to accurately reflect all emissions reductions expected to occur during this planning period, the new modeling would require an update of the emissions inventory for Arizona and the surrounding states to include not just the actions under this FIP, but all EPA and state regulatory actions on point, area, and mobile sources. After the inventory is developed and reviewed by the affected states for accuracy, it must be converted to a model-ready format before air quality modeling can be used to estimate the future visibility levels at the Class I areas.[252] This modeling would require specialized and extensive computing hardware and expertise. Developing all of the necessary input files, running the photochemical model, and post-processing the model outputs would take several months at a minimum. Finally, the specific controls we are requiring that would be inputs to the modeling changed from the proposal as a result of comments and supplemental information received from the affected facilities and other commenters. Some of these changes occurred only shortly before the deadline for this action, leaving insufficient time for the extensive modeling effort required to develop new RPGs based on photochemical modeling. Therefore, we were unable to conduct additional modeling to quantify the degree of progress that we expect to result from this new combination of controls.

Nonetheless, in order to provide RPGs that account for emission reductions from the FIP controls, we have used a method similar to the one that we used in our FIP for Hawaii, which is based on a scaling of visibility extinction components in proportion to emission changes. To determine the RPGs, we started with the 2018 projection of extinction components from the WRAP's CMAQ photochemical modeling of WRAP emissions scenario PRP18b (''Preliminary Reasonable Progress for 2018, version b''). This

[247] 79 FR 9363.

[248] *Id.*

[249] The State's analysis included monitored data for 2000 through 2010, *i.e.* including several years after the 2000–2004 baseline, during which the effect of emission changes from new controls and other causes might be expected to manifest. We did not find the evidence for downward trends compelling, partly because the year to year variability was comparable to the claimed decreases in visibility impairment. 78 FR 29297. A portion of the State analysis attempted to explain some periods of anomalously high sulfate impairment, with back trajectories suggesting that they were due to out-of-State sources. The difficulty of this analysis illustrates why recent monitored trends by themselves are not a reliable basis for projecting progress, and why multistate photochemical modeling is needed. Unlike trend analysis, such modeling accounts for out-of-State and other sources, along with the varying meteorology and atmospheric chemistry conditions encountered by the pollution plumes from these sources. In any case, the State's analysis and recent trend data do not provide us a basis for establishing numerical RPGs.

[250] 77 FR 23988, 24053.

[251] See 77 FR 31693, 31708.

[252] 79 FR 2437.

CMAQ PRP18b emission scenario included the results of State BART determinations and other SIP controls, as well as projected emissions from other point, area, and mobile sources.[253] We scaled the modeled visibility extinction components for sulfate (SO_4) and nitrate (NO_3) in proportion to the FIP's emission reductions for SO_2 and NO_X, respectively. The sulfate scaling factor was the CMAQ PRP18b SO_2 emissions with FIP controls for BART and RP sources in place, divided by the original CMAQ PRP18b SO_2 emissions.[254] We conducted the same scaling exercise with nitrate and NO_X. The scaled sulfate and nitrate extinctions were added to the unscaled extinctions for organic mass and other components to get total extinction, and then this was used to calculate post-FIP RPGs in deciviews.[255] The results of this analysis are shown in Tables 9 and 10.

TABLE 9—REASONABLE PROGRESS GOALS FOR 20 PERCENT WORST DAYS

[In deciviews]

Code	Class I area	IMPROVE monitor code	2000–2004 baseline	2064 natural conditions	2018 URP	2018 projection by WRAP	FIP effect	FIP 2018 RPG	Years to reach natural conditions
chir	Chiricahua NM.	CHIR1	13.43	7.20	11.98	13.35	-0.16	13.19	367
chrw	Chiricahua WA.	CHIR1	13.43	7.20	11.98	13.35	-0.16	13.19	367
gali	Galiuro WA.	CHIR1	13.43	7.20	11.98	13.35	-0.16	13.19	367
grca	Grand Canyon NP.	GRCA2	11.66	7.04	10.58	11.14	-0.11	11.02	101
maza	Mazatzal WA.	IKBA1	13.35	6.68	11.79	12.76	-0.13	12.63	131
moba	Mount Baldy WA.	BALD1	11.95	6.24	10.62	11.52	-0.13	11.40	141
pefo	Petrified Forest NP.	PEFO1	13.21	6.49	11.64	12.76	-0.12	12.64	165
pimo	Pine Mountain WA.	IKBA1	13.35	6.68	11.79	12.76	-0.13	12.63	131
sagu	Saguaro NP East.	SAGU1	14.83	6.46	12.88	14.82	-0.13	14.68	767
sagu	Saguaro NP West.	SAWE1	16.22	6.24	13.90	15.99	-0.12	15.87	397
sian	Sierra Ancha WA.	SIAN1	13.67	6.59	12.02	13.17	-0.12	13.05	159
supe	Superstition WA.	TONT1	14.16	6.61	12.40	13.85	-0.13	13.72	237
syca	Sycamore Canyon WA.	SYCA1	15.25	6.65	13.25	15.00	-0.08	14.92	360

TABLE 10—REASONABLE PROGRESS GOALS FOR 20 PERCENT BEST DAYS

[In deciviews]

Code	Class I area	IMPROVE monitor code	2000–2004 baseline	2064 natural conditions	2018 projection by WRAP	FIP effect	FIP 2018 RPG	Degradation?
chir	Chiricahua NM	CHIR1	4.91	1.83	4.90	-0.12	4.77	No.
chrw	Chiricahua WA	CHIR1	4.91	1.83	4.90	-0.12	4.77	No.
gali	Galiuro WA	CHIR1	4.91	1.83	4.90	-0.12	4.77	No.
grca	Grand Canyon NP	GRCA2	2.16	0.31	2.12	-0.10	2.02	No.
maza	Mazatzal WA	IKBA1	5.40	1.91	5.17	-0.11	5.07	No.
moba	Mount Baldy WA	BALD1	2.98	0.51	2.86	-0.10	2.76	No.
pefo	Petrified Forest NP.	PEFO1	5.02	1.07	4.73	-0.11	4.62	No.
pimo	Pine Mountain WA	IKBA1	5.40	1.91	5.17	-0.11	5.07	No.
sagu	Saguaro NP East	SAGU1	6.94	2.23	7.04	-0.11	6.93	No.
sagu	Saguaro NP West	SAWE1	8.58	2.50	8.34	-0.11	8.23	No.

[253] ''Simulation Specification for 2018 Preliminary Reasonable Progress Simulation version B'', WRAP Regional Modeling Center, August 11, 2009. Available at WRAP Regional Modeling Center Visibility Modeling Results Web page *http://pah.cert.ucr.edu/aqm/308/cmaq.shtml.*

[254] We assumed that the relevant inventory is the emissions in Arizona and all of its neighboring states.

[255] Additional details of the calculation are available in a spreadsheet in the docket, *FIP_RPG_estimates.xlsx.*

TABLE 10—REASONABLE PROGRESS GOALS FOR 20 PERCENT BEST DAYS—Continued

[In deciviews]

Code	Class I area	IMPROVE monitor code	2000–2004 baseline	2064 natural conditions	2018 projection by WRAP	FIP effect	FIP 2018 RPG	Degradation?
sian	Sierra Ancha WA	SIAN1	6.16	2.03	5.88	-0.10	5.78	No.
supe	Superstition WA	TONT1	6.46	2.03	6.22	-0.12	6.09	No.
syca	Sycamore Canyon WA.	SYCA1	5.58	0.98	5.49	-0.10	5.39	No.

Although we recognize that this method is not refined, it allows us to translate the emission reductions achieved through the FIP into quantitative RPGs, based on modeling previously performed by the WRAP. These RPGs reflect rates of progress that are faster than the rates projected by the State, but are still slower than the URP for each Class I areas. Nonetheless, we consider these rates to be reasonable for the reasons set forth in our proposal and in this final rule. We also note that RPGs, unlike the emission limits that apply to specific RP sources, are not directly enforceable.[256] Rather, they are an analytical tool used by EPA to evaluate whether measures in the implementation plan are sufficient to achieve reasonable progress.[257] Arizona may choose to use these RPGs for purposes of its progress report, or may develop new RPGs, based on new modeling or other appropriate techniques, in accordance with the requirements of 40 CFR 51.308(d)(1).

Comment: Citing 40 CFR 51.308(d)(1)(vi) and EPA's RP Guidance, CPC stated that emission reductions that will occur under other CAA requirements must be taken into account when establishing RPGs. For example, CPC cited the Portland Cement MACT that imposes a PM emission standard of 0.07 lb/ton clinker for existing kilns and clinker coolers. The revised Portland Cement MACT will significantly reduce PM emissions at the Rillito Cement Plant. CPC stated that this is particularly noteworthy because at Saguaro National Park and other Class I areas in Arizona, PM is a far more substantial contributor to regional haze than NO_X. CPC asserted that even if no additional controls are imposed as part of this initial RH plan, emissions of the primary visibility-impacting pollutant will substantially decrease at the Rillito Plant.

Response: We partly agree with this comment. The cited provision of the RHR prohibits the adoption of RPGs that represent less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period.[258] EPA's RP Guidance explains that states ''must therefore determine the amount of emission reductions that can be expected from identified sources or source categories as a result of requirements at the local, State, and federal levels during the planning period of the SIP and the resulting improvements in visibility at Class I areas.'' [259] The WRAP modeling that Arizona used to develop RPGs addressed this requirement by including all emission reductions expected at the time that the modeling was performed.[260] In addition, Arizona submitted a supplemental analysis of monitored coarse mass and fine soil impairment at the State's Class I areas, including an examination of the monitored visibility impairment at Class I areas near large stationary sources of PM_{10}.[261] Based on these analyses and EPA's supplemental analysis, as described in our supplemental notice of proposed rulemaking, we approved Arizona's conclusion that no further analysis of PM controls was necessary for this planning period.[262] Therefore, we do not agree that we are required to consider expected reductions in PM emissions from the Portland Cement MACT. Nonetheless, we note that, according to information supplied by CPC, implementation of the cement MACT at Kiln 4 would result in a relatively modest decrease in emissions from 9.6 pounds/hour (lb/hour) to 9.0 lb/hour, a difference of 0.6 lb/hour or 6.25 percent.[263] According to modeling performed by the WRAP, based on an emission rate of 1.43 grams/second (g/s) (about 11.3 lb/hour), the baseline impact of PM emissions from Kiln 4 at the Rillito Plant would be 0.02 dv or less at all potentially affected Class I areas.[264] While the expected emission reductions from Kilns 1–3 are greater, these kilns have not operated since 2008, so there would be no practical impact from this change. Therefore, the overall visibility improvement expected from implementation of the Portland Cement MACT at the Rillito Plant would be *de minimis.*

Comment: CPC stated that EPA's proposed demonstration that its RPGs are reasonable does not and cannot comply with all requirements of 51.308(d)(1)(ii), which state that a RH plan ''must provide to the public for review an assessment of the number of years it would take to attain natural conditions if visibility improvement continues at the rate of progress selected by the State as reasonable.'' As the FIP does not contain this analysis, CPC asserted that the proposed rule does not comply with these requirements.

CPC further stated that once EPA establishes RPGs based on the controls proposed for BART sources, it may learn that 40 CFR 51.308(d)(l)(ii) is not even applicable. CPC asserted that given the significant additional controls proposed for BART sources, it is likely that several Class I Areas will be on pace to meet or exceed URPs, eliminating the need to provide the assessment required here. For example, CPC stated that at Saguaro National Park, EPA has estimated that its proposed BART controls on the Hayden Smelter, Miami Smelter, and Apache Power Plant will have a collective visibility benefit of 2.68 dv, more than enough to meet the URP with no additional controls. CPC added that if Saguaro National Park is already on pace to meet the URP, then

[256] 40 CFR 51.308(d)(1)(v).

[257] Id.

[258] 40 CFR 51.308(d)(1)(vi).

[259] RP Guidance section 4.1.

[260] See Arizona RH SIP at 167 (explaining that Arizona's RPGs are based on, among other things, ''the results of the CMAQ modeling . . . which includes ''on-the-books'' controls and other emission inputs'' and Appendix C (list of CMAQ model emission inputs) Section 11.3.3, and the BART review described in Chapter 10. *http://wrapedms.org/InventoryDesc.aspx.*

[261] Arizona RH SIP Supplement, page 97.

[262] See 78 FR 29298 (proposing to concur with the State's decision to omit coarse mass and fine soil from its four-factor reasonable progress analysis for this planning period); 78 FR 46175, codified at 40 CFR 52.120(c)(154)(ii)(A)(2) and (c)(158) (approving the Arizona Regional Haze SIP, except for specified sections).

[263] See CPC Comments, Exhibit 2.

[264] Summary of WRAP RMC BART Modeling for Arizona Draft#5, May 25, 2007, at 2 (Table 1) and 17, SRC04 Arizona Portland Cement: PM Only (98th percentile 3 Year Average).

it would be reasonable to conclude that additional controls are not necessary for Kiln 4 at this time.

Response: We disagree with this comment. As shown in Table 9 above, even accounting for BART and RP controls, the RPG for Saguaro National Park on the 20 percent worst days is still well above the URP, and it is expected to take hundreds years to reach natural conditions. It is important to note that deciview improvements modeled for individual BART and RP sources using CALPUFF are not directly comparable to RPGs. In particular, modeling for individual BART and RP sources is performed using natural background conditions, rather than current, degraded conditions. EPA explained the rationale for this approach in the preamble to the BART Guidelines:

> Using existing conditions as the baseline for single source visibility impact determinations would create the following paradox: the dirtier the existing air, the less likely it would be that any control is required. This is true because of the nonlinear nature of visibility impairment. In other words, as a Class I area becomes more polluted, any individual source's contribution to changes in impairment becomes geometrically less. Therefore the more polluted the Class I area would become, the less control would seem to be needed from an individual source. . . . Such a reading would render the visibility provisions meaningless, as EPA and the States would be prevented from assuring ''reasonable progress'' and fulfilling the statutorily-defined goals of the visibility program. [265]

Thus, EPA has determined that it is appropriate to use natural background conditions in order to gauge the impacts of an individual source and the expected benefits of controls on an individual source.

By contrast, RPGs are intended to reflect actual conditions at a future date. Accordingly, they are typically set using regional-scale photochemical grid modeling that accounts for the visibility impacts of numerous sources over a large geographic area. Under this approach, the impact attributable to any one source (and the benefits available from controls on any one source) are quite small. Therefore, the expected degree of visibility improvement (in dv) from controls on individual sources does not translate directly into the same degree of improvement in RPGs.

Comment: Citing 40 CFR 51.308(d)(1)(iv), CPC stated that the RHR imposes an obligation to consult with states that may reasonably be anticipated to cause or contribute to visibility impairment in Arizona's Class 1 areas. CPC stated that the proposed FIP does not identify this requirement or explain how it complies with it. CPC concluded that because this consultation must occur when developing each RPG, the proposed FIP does not comply with this requirement.

Response: We do not agree with this comment. As explained in our proposal, the Arizona RH FIP covers only those elements of the RHR for which we disapproved the Arizona RH SIP.[266] Although we disapproved Arizona's RPGs, we did not disapprove the Arizona RH SIP with respect to the consultation requirements 40 CFR 51.308(d)(iv). As explained in our proposal on the Arizona RH SIP, ''Arizona consulted with other states and tribes using the WRAP forums and processes. In particular, Arizona consulted with California, Colorado, New Mexico, and Utah using the primary vehicle of the WRAP Implementation Work Group (IWG).'' [267] EPA also consulted with these other states through our participation in the WRAP.[268] Furthermore, as explained elsewhere in this notice, we have relied upon modeling performed by the WRAP to help quantify RPGs for Arizona. In addition, through our actions on other states' RH SIPs, EPA has considered the impacts of emissions from other states on Arizona's Class I areas.[269] Therefore, we do not agree that we failed to comply with 40 CFR 51.308(d)(1)(iv) or that further consultation was necessary for purposes of today's FIP.

Comment: CPC asserted that 40 CFR 51.308(i)(2) requires that FLMs must be provided with an opportunity for consultation at least 60 days before holding any public hearing on a regional haze implementation plan, and must be provided an opportunity to discuss their recommendations on development of RPGs. CPC stated that the proposed FIP neither identifies nor explains how these requirements were met.

Response: We do not agree with these comments. As noted above, the Arizona RH FIP covers only those elements of the RHR for which we disapproved the Arizona RH SIP.[270] We approved the Arizona RH SIP with respect to the requirements of 40 CFR 51.308(i).[271] Therefore, no FIP is required for this element under the RHR. Nonetheless, we consulted the FLMs during development of the proposed FIP and we have considered and responded to their comments on our proposal, as documented elsewhere in this notice. We note that, while the FLMs have urged EPA to require additional RP controls, they expressed support for EPA's proposed determinations with regard to CPC's Rillito Plant.[272]

Comment: NPS indicated that it agreed with EPA that it is not likely that all of Arizona's Class I areas will meet the URP during this planning period. But, according to NPS, this is partly because EPA and states have not done enough to properly address emissions from RP sources. NPS expressed disappointment that although EPA has acknowledged that certain control technologies are cost-effective, it still proceeded to reject certain controls because they would lead to insufficient improvements in visibility. According to NPS, a fundamental principle of the RHR is the recognition that a decline in visibility is due to a number of sources that contribute to a cumulative visibility issue. NPS argued that EPA's approach of disaggregating each source's contributions to visibility impairment does not solve the problem. The EGU sources that EPA analyzed for reasonable progress, i.e., Cholla Unit 1 and Springerville Units 1 and 2, combined to cause a cumulative 32 dv of impairment at Class I areas in the State. By installing controls on these units, NPS said that emissions could be reduced by more than 4,400 tpy and decrease visibility impacts by 2.6 dv at a cost of $25 million annually. NPS asserted that, by not requiring controls on these units, EPA has failed to meet its obligation to show that it has taken all reasonable measures to make reasonable progress at this time.

Response: We agree with NPS that a fundamental principle of the RHR is the

[265] See 70 FR 39124.

[266] See also CAA section 302(y), 42 U.S.C. 7602(y) (defining FIP as a ''plan (or portion thereof) promulgated by the Administrator *to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a [SIP]* . . .'').

[267] 79 FR 75730.

[268] See, e.g. *http://www.wrapair.org/commforum.html* (describing and listing membership of various WRAP forums, committees and work groups).

[269] See, e.g. 76 FR 13944, 13953 (discussing the ''very small impact on visibility impairment'' of emissions from California on Grand Canyon NP and Sycamore Canyon NP); 77 FR 50936, 50937 (discussing expected improvement in visibility at Grand Canyon NP from BART at Reid Gardner Generating Station in Nevada); 79 FR 26909, 26917, Table 4 (showing expected visibility improvement at Grand Canyon NP and Petrified Forest NP from BART at San Juan Generating Station in New Mexico).

[270] See also CAA section 302(y), 42 U.S.C. 7602(y) (defining FIP as a ''plan (or portion thereof) promulgated by the Administrator *to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a [SIP]* . . .'').

[271] See 77 FR 75734 (proposing to find that Arizona met the requirements for coordination with the FLMs under 40 CFR 51.308(i)); 78 FR 46175 (codified at 40 CFR 52.120(c)(154)(ii)(A)(2) and (c)(158)) (approving the Arizona Regional Haze SIP, except for specified sections).

[272] NPS Comment Letter at 7–8, 10–11.

recognition that visibility impairment at Class I areas is caused by a multitude of different sources. However, in this particular action, EPA is only considering the reasonableness of controls for point sources of NO_X and area sources of NO_X and SO_2. As for the specific EGUs referenced in this comment, we have addressed NPS's concerns about these sources elsewhere in this notice. Therefore, we do not agree that EPA has failed to meet its obligation to ensure reasonable progress. We will continue to work with NPS, the State, and other stakeholders to ensure that reasonable progress is made at Arizona's Class I areas.

Comment: PCC agreed with EPA that it is necessary to consider the degree of improvement in visibility that would be achieved by the imposition of control technology-based standards under 40 CFR 51.308(d)(1)(i)(A), but noted the requirement of 40 CFR 51.308(d)(1)(i)(B) to consider the uniform rate of improvement in visibility. PCC stated that, although EPA has appropriately concluded it is not reasonable to provide for rates of progress at any of Arizona's Class I areas consistent with the URP in this planning period, EPA should make clear the functional distinction between 40 CFR 51.308(d)(1)(i) [RP analysis] and 308(e)(1)(ii)(A) [BART analysis] or else the distinction might appear to be irrelevant. PCC said this clarity is needed where BART-ineligible sources are concerned, particularly PCC, for which EPA characterized the proposed standard as ''EPA's proposed BART,'' even though PCC is a BART-ineligible source.

Response: We agree that the Clarkdale Plant is not BART-eligible. The reference in the TSD to ''EPA's proposed BART'' for the Clarkdale Plant was a clerical error. Thus, our analysis of the Clarkdale Plant is based solely on the RP requirements. There are several distinctions in the applicable requirements for RP sources and BART sources, which are reflected in our analyses for the respective source types. First, unlike for BART, the expected degree of visibility improvement is not listed in the RHR as a required factor for consideration in relation to individual RP sources. While we have considered visibility improvement as a supplementary factor for RP sources, we have not given it the same weight as in our BART determinations, for which it is a mandatory statutory factor. Second, ''the time necessary for compliance'' is a required factor for RP, but not for BART, and we have considered it as such. Third, BART controls must be installed ''as expeditiously as practicable,'' whereas there is no similar requirement for RP sources. Thus, we do not consider the distinction between BART and RP sources to be irrelevant.

Comment: Earthjustice stated that EPA's proposed FIP fails to meet the goals of the regional haze program. The commenter asserted that EPA's RPGs and reasonable progress determination are in violation of the CAA. Earthjustice said that Arizona's regional haze plan, which EPA disapproved, was far from meeting the RPGs and would have delayed natural visibility for Arizona's national parks and wilderness areas by hundreds, even thousands of years. According to Earthjustice, it is now EPA's responsibility to step in and ensure that a Federal haze plan makes reasonable progress toward the national goals, because Arizona's plan failed to do so. However, in Earthjustice's opinion, EPA's proposal failed to comply with the regional haze program's reasonable progress requirements. Earthjustice pointed out that the Agency admitted that the Federal plan will not achieve reasonable progress towards the 2064 goal. Earthjustice continued by stating that EPA has failed to meet the requirements of 40 CFR 51.308(d)(1)(ii) to demonstrate that (1) the 2064 goal is unreasonable at each of Arizona's Class I areas and that (2) EPA's RPGs are reasonable.

Earthjustice stated that EPA should have determined the necessary emissions reductions needed to remain on the 2064 glide path and whether those reductions would be reasonable based on the four reasonable progress factors. According to Earthjustice, instead of doing this EPA promptly determined that the 2064 glide path was unachievable because the individual source-by-source reasonable progress determinations would not be enough to meet the glide path. Earthjustice acknowledged and appreciates the work EPA has done in place of Arizona's inadequate haze plan. However, Earthjustice thought that the approach EPA has followed is inadequate because it is not bound to the overarching 2064 natural visibility goal. Specifically, it is not known what level of emissions reductions (1,000, 100,000 or 1,000,000 tpy) will ensure that the State of Arizona will meet the glide path for each Class I area. Nor is it known how those reductions could be achieved and if those reductions would be reasonable. Because these analyses have not been conducted, Earthjustice argued that EPA has not shown that it would be unreasonable for Arizona's Class I areas to achieve the glide path.

Earthjustice pointed to a brief filed by EPA in *American Corn Growers,* where EPA stated that:

> Certainly the courts would not find it difficult to affirm an EPA decision finding a State plan ''unreasonable'' if a State proposes to improve visibility so slowly that the national visibility goal would not be achieved for 200 or 300 years despite the availability of more stringent, cost-effective measures.[273]

Earthjustice stated, however, that under EPA's proposal it is very likely that it would take even longer to restore Class I areas to their natural visibility. In spite of recent EPA actions and the proposed pollution controls, the FIP does not, in Earthjustice's opinion, have sufficient emissions reductions to bring Arizona's Class I areas back on track to the glide path. Earthjustice asserted that additional controls are needed, and without further controls, it could still take centuries or millennia to restore natural visibility.

Similarly, CPC stated that because the proposed FIP contains no discussion of what measures would be required to meet a uniform rate of improvement in Arizona's Class 1 areas, the proposed rule does not comply with 40 CFR 51.308(d)(1)(i)(B).

Response: The commenters' focus on the URP for the 20 percent worst days is misguided for a number of reasons. First, the URP is not binding. A state or EPA can set RPGs that provide for less progress than the URP if those RPGs are demonstrated to be reasonable (and achievement of the URP to be unreasonable) based upon an analysis of the four RP factors.[274] Second, as explained further below, much of the visibility impairment on the 20 percent worst days at many Class I areas implicated in this plan is caused by sources that are either non-anthropogenic or not feasible to control. Under these circumstances, projections regarding progress on those days are of limited value in determining the reasonableness of additional controls. Lastly, the only source categories and pollutants at issue in this action are non-BART point sources of NO_X and area sources of NO_X and SO_2. All other source categories and pollutants were addressed by EPA's action on the State's SIP.[275]

EPA disagrees with Earthjustice's assertion that we have not demonstrated that it is unreasonable to attain the URP. The commenter correctly notes that the

[273] Corrected Final Brief of Respondent EPA at 80–81, *Am. Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002) (No. 99–1348). Submitted with the comments as Exhibit 15.

[274] See 64 FR 35730–35731.

[275] See 78 FR 46172.

State's RPGs provide little visibility improvement on the 20 percent worst days, leading to long estimates of the time that would be required to attain ''natural'' levels of visibility. Earthjustice implicitly assumes that most of the visibility impairment on the 20 percent worst days is from controllable, anthropogenic sources. As EPA explained in our previous action on the Arizona RH SIP, the causes of haze on the 20 percent worst days in the Class I areas of Arizona are often due to largely uncontrollable sources.[276] Table 8 in our December 21, 2012, proposed action on the Arizona RH SIP shows the causes of haze at the Class I areas in Arizona. Earthjustice highlighted seven Class I areas that are projected to make particularly slow progress in visibility improvement on the 20 percent worst days: Saguaro National Park East Unit (SAGU1 monitor), Chiricahua National Monument, Chiricahua Wilderness and Galiuro Wilderness (all represented by the CHIR1 monitor), Saguaro National Park West Unit (SAWE1 monitor), Sycamore Canyon Wilderness (SYCA1 monitor) and Superstition Wilderness (TONT1 monitor).[277] As shown in Table 11, in each of these Class I areas, the majority of impairment on the 20 percent worst days is attributable to organic carbon, elemental carbon, coarse mass, fine soil and sea salt.

TABLE 11—PERCENTAGE CONTRIBUTION FROM ORGANIC CARBON, ELEMENTAL CARBON, COARSE MASS, FINE SOIL ON 20 PERCENT WORST DAYS DURING BASELINE PERIOD[278]

IMPROVE Monitor	Contribution from organic carbon, elemental carbon, coarse mass, fine soil and sea salt (percent)
SAGU1	65.9
CHIR1	68.9
SAWE1	72.9
SYCA1	81.8
TONT1	66.8

We previouslyapproved Arizona's RP determinations for this planning period with respect to each of these pollutants.[279] We also approved the State's determination that it is not reasonable to require additional controls on mobile sources of NO_X and SO_2 and that it is not reasonable to require additional SO_2 reductions from point sources in this planning period for RP purposes.[280] Thus, the only RP issue at question in this action is whether it is appropriate to require controls on non-BART point sources of NO_X or area sources of NO_X and SO_2 in order to ensure reasonable progress in visibility improvement. As explained elsewhere in this notice, based on our analyses of the four RP factors and the potential for visibility improvement from additional controls, we have determined that it reasonable to require installation of SNCR on two cement kilns by 2018, but that additional RP controls are not reasonable at this time.

Comment: Earthjustice strongly urged EPA to require additional RP controls beyond the proposal for control on only two cement kilns, to make sure Arizona returns to the glide path to meet natural visibility goal in 2064. According to Earthjustice, in EPA's explanation of why it did not require any of the other sources of NO_X to install pollution controls, EPA recognized that reasonable progress controls on these other sources are generally reasonable and EPA said that the decision of no control for these sources should be revisited in future planning periods. Earthjustice argued that taking into account how far off Arizona Class I areas are from their glide paths, EPA should require reasonable progress controls on these other sources during the current planning period. Earthjustice cited 40 CFR 51.308(d)(3)(ii), which requires ''all measures necessary'' be implemented to achieve reasonable progress. Earthjustice said that additional NO_X reductions can be achieved at both cement plants and should be pursued in order to ensure Arizona Class I areas move closer towards the glide path.

While acknowledging that EPA's proposal is an improvement over the State's plan, Earthjustice questioned whether it represents all measures that should be taken to reduce SO_2, NO_X, and PM that impair visibility at places like the Grand Canyon and the many other renowned national parks in Arizona and the Southwest. To the extent that it does not, Earthjustice encouraged EPA to compel further reductions. Earthjustice stated that it is good that EPA has acted, particularly in the earlier phase of the Arizona plan that compels controls on the Cholla, Coronado, and Apache coal-fired power plants, but Earthjustice asserted that given the level of impairment and numerous sources responsible, more should be done.

Response: As explained in our response to the previous comment, the URP is not binding and a state or EPA can set RPGs that provide for less progress than the URP if those RPGs are demonstrated to be reasonable (and achievement of the URP to be unreasonable) based upon an analysis of the four RP factors.[281] EPA disagrees with the Earthjustice's interpretation of 40 CFR 51.308(d)(3)(ii), which requires the State (or EPA in the case of a FIP) to implement all measures necessary to achieve the RPG. As explained in the previous response, due to our previous partial approval of the State's SIP, our RP analysis is limited to point sources of NO_X and area sources of NO_X and SO_2. Our responses to comments regarding specific sources are included elsewhere in this notice. As explained in those responses, EPA does not agree that additional controls are warranted in this implementation period.

F. Other Comments on Reasonable Progress

Comment: ADEQ commented that even though EPA has disapproved the RPGs in Arizona's RH SIP, the Agency has been unable to develop specific goals, except for the ones based on the WRAP modeling results. The only thing EPA has added to the LTS for Arizona, besides new BART or reasonable progress control requirements, was ''enforceable measures.'' However, ADEQ asserted that many of these measures are already in place. For example, ADEQ asserted that ''EPA admits that the current Title V permit for the Miami Smelter provide[s] sufficient enforceability.'' Therefore, ADEQ argued that EPA has no basis for disapproving those portions of the Arizona RH SIP and should not impose a FIP for that reason.

Response: These comments largely pertain to EPA's partial disapproval of the Arizona RH SIP and are therefore untimely, as EPA has already taken final action on the SIP.[282] To the extent that that comments suggest that EPA has not fulfilled the requirements of the RHR, we do not agree. As explained above, we are now quantifying the RPGs that we proposed. These RPGs show greater

[276] The pollutants in question are organic carbon, elemental carbon, coarse mass, fine soil and sea salt. We explained in our action on the State's SIP that these pollutants are not reasonable to control at this time. See 77 FR 75728 for a discussion on sources of organic carbon and elemental carbon (fires), and 78 FR 29297–29299 for a discussion of coarse mass and fine soil.

[277] See 77 FR 75717.

[278] See Table 8 on 77 FR 75717.

[279] See 77 FR 75728 for a discussion on sources of organic carbon and elemental carbon (fires), and 78 FR 29297–29299 for a discussion of coarse mass and fine soil.

[280] 78 FR 46146.

[281] See 64 FR 35730–35731.

[282] 78 FR 46142.

reasonable progress at all of the State's Class 1 areas than Arizona's RPGs. Furthermore, we note that our FIP includes enforceable emission limits and related requirements applicable to six different sources. The Arizona RH SIP did not include any such enforceable measures. With regard to the Miami Smelter in particular, as explained elsewhere in this notice, we are incorporating the relevant NESHAP requirements as part of the final FIP in order to ensure the federal enforceability of ADEQ's BART determination for PM_{10}.

Comment: Earthjustice commented that additional PM reductions could be achieved by using improved fabric filter materials at the cement plants' fabric filters.

Response: Because we previously approved the State's RP analysis for PM, we did not evaluate additional PM controls at any sources for purposes of our FIP. However, we note that, as detailed in CPC's comments, the Rillito Plant will be required to improve its PM controls in order to comply with the Portland cement MACT.

VIII. Responses to Comments on Statutory and Executive Order Reviews

Comment: CPC stated that, with the exception of Consultation and Coordination with Indian Tribal Governments (Executive Order 13175), the proposed FIP asserts that the statutes and executive orders (E.O. or Order) are inapplicable in this matter, but does not adequately explain why. With respect to Regulatory Planning and Review (Executive Order 12866), the proposed FIP stated that it is not a ''significant regulatory action'' and is not a rule of general applicability. CPC stated that the proposed FIP will have an adverse material effect on several sectors of the economy, in particular the cement and copper industries, and includes requirements that have statewide, general applicability. According to CPC, one of the provisions of Executive Order 12866 requires agencies to consider alternatives. CPC stated that had the Proposed FIP considered and evaluated alternatives, such as deferring controls on CPC during this first planning period, then it would be possible to conduct a full and fair evaluation to see if the benefits are worth the costs. Without this analysis of alternatives, CPC believes the proposed FIP is incomplete. Regarding the Unfunded Mandates Reform Act (UMRA), CPC asserted that given the extremely high costs to comply with the rule (about $81,000,000 for the Hayden Smelter alone), it is likely that the aggregate costs will exceed the $100,000,000 threshold in at least one year. Similarly, according to CPC, when combined with the BART controls imposed by the FIP on three power plants, annual expenditures will exceed the UMRA's threshold ''in any one year.'' CPC stated EPA should not circumvent UMRA by subdividing a regulatory action, in this case the adoption of a FIP, into multiple parts. Regarding Executive Order 13563, CPC asserted that EPA must redo the proposed FIP to establish new RPGs, and identify controls as necessary to meet the RPGs. As part of that process, Executive Order 13563 should be followed so that EPA identifies and uses the best, most innovative, and least burdensome tools to achieve reasonable progress. CPC asserted that complying with the statutes and Executive Orders governing the rulemaking process is good public policy and the decision to disregard these principles has led to arbitrary and capricious results.

Response: We do not agree that our proposed FIP is inconsistent with the requirements of any applicable Executive Orders (E.O.s) or statutes, or that we failed to explain the applicability of these requirements. Under E.O. 12866, ''Regulatory Action'' is defined as ''any substantive action by an agency . . . that promulgates or is expected to lead to the promulgation of a final rule or regulation.'' [283] ''Regulation'' or ''rule,'' in turn, is defined as ''an agency statement of general applicability and future effect.'' [284] E.O. 12866 does not define ''statement of general applicability,'' but this term commonly refers to statements that apply to groups or classes, as opposed to statements which apply only to named entities. The Phase 3 partial FIP for Arizona's regional haze program is not a rule of general applicability because its requirements are tailored to six individually identified facilities. Thus, it is not a ''rule'' or ''regulation'' within the meaning of E.O. 12866 and this action is not a ''regulatory action'' subject to 12866.

Executive Order 13563, Improving Regulation and Regulatory Review, is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in EO 12866. In general, the Order seeks to ensure the regulatory process is based on the best available science; allows for public participation and an open exchange of ideas; promotes predictability and reduces uncertainty; identifies and uses the best, most innovative, and least burdensome tools for achieving regulatory ends; and takes into account benefits and costs, both quantitative and qualitative. However, nothing in the Order shall be construed to impair or otherwise affect the authority granted by law to the Agency. As explained in our proposal, this action is not an action subject to review under Executive Orders 12866 and 13563. In particular, as explained above, this action is not a ''regulatory action'' as defined under E.O. 12866. Nonetheless, we have followed the principles of E.O. 13563 in developing this action. We have applied the best available science, sought information and feedback from potentially affected sources, carefully considered costs and benefits, provided a public comment period and two public hearings, and offered flexibility on compliance mechanisms (e.g., a BART alternative for TEP Sundt, performance standards rather than emissions standards for the copper smelters, adjusted averaging times for the Nelson Lime Plant, and the option of annual emission limits for the cement plants).

Under section 202 of UMRA, before promulgating any final rule for which a general notice of proposed rulemaking was published, EPA must prepare a written statement, including a cost-benefit analysis, if that rule includes any ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. As of 2013, the inflation-adjusted threshold was $150 million.[285] UMRA defines the term ''Federal private sector mandate'' to mean any provision in regulation that would impose an enforceable duty upon the private sector. Under UMRA, the term ''regulation'' or ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking. This final rule is limited to addressing the remaining requirements of the RHR for Arizona and does not include other regional haze actions occurring in separate rulemakings. We estimate that the total annual costs of this rulemaking action will not exceed $32,012,772.[286]

[283] Executive Order 12866, 58 FR 51735 (October 4, 1993), section 3(e).

[284] Id. section 3(d).

[285] See *http://www.cbo.gov/publication/45209*.

[286] See ''Summary of Costs for Final Rule: Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze and Interstate Visibility Transport Federal Implementation Plan, EPA–R09–OAR–2013–0588.'' We do not agree with the commenter that we should use total capital costs instead of annualized costs. The UMRA threshold is based on annual costs. It is not known in exactly which year capital costs associated with controls would be incurred. Thus it is not possible to allocate these costs to specific years. Instead, our

Even if this were added to the annual costs of our prior Phase 1 FIP for Arizona ($65 million), the total cost is still less than the inflation-adjusted annual threshold. Furthermore, the cost estimates we have provided are based on conservative assumptions (i.e., tending to overestimate rather than underestimate costs) and do not account for the fact that certain controls (e.g., SO_2 controls for the smelters) may be required under other provisions of the CAA prior to the implementation deadlines in this FIP.

Comment: One commenter (Representative Gosar) expressed concern that the proposed FIP does not adequately assess the potential negative economic impacts on small businesses. The commenter noted that EPA states in the **Federal Register** that this proposed rule will not have a significant economic impact on a substantial number of small businesses as none of the facilities subject to this proposed rule are owned by a small entity. While conceding that the six facilities addressed in the FIP are technically not small businesses, the commenter asserted that the rule will harm small businesses with services that are dependent on the facilities. The commenter contended that putting these facilities out of business or causing them to increase their rates to pay for the new technology mandates will certainly have a trickle-down effect on a significant number of small businesses.

Response: This comment appears to refer to EPA's certification under the Regulatory Flexibility Act (RFA) that the FIP will not have a significant economic impact on a substantial number of small entities. Courts have interpreted the RFA to require a regulatory flexibility analysis only when a substantial number of small entities will be subject to the requirements of the Agency's action.[287] None of the facilities subject to this rule is owned by a small entity.[288] Thus, no regulatory flexibility analysis is required. Nonetheless, EPA sought comments regarding the cost of controls from all entities affected by this action and carefully considered all relevant information. None of the affected entities, nor any other commenter, has provided any evidence that the requirements of today's rule would cause any company to go out of business. As described elsewhere, this final action is necessary to achieve the objectives of the CAA and RHR based on our determination that the visibility improvements justify the costs of this rule.

IX. Responses to Other Comments

A. Comments on Preamble Language

Comment: LNA recommended a number of corrections and clarifications to the preamble language in our proposed rule published on February 18, 2014.

Response: We acknowledge the corrections and clarifications from LNA. While we cannot revise the text of the proposal preamble, we have addressed the substantive issues identified by LNA in our responses to comments in this final rule.

B. Comments on Rule Language

Comment: Two commenters (LNA and ASARCO) suggested various corrections and clarifications to the proposed rule language.

Response: We acknowledge the corrections and clarifications suggested by LNA and ASARCO. We have addressed the substantive issues identified by LNA and ASARCO in our responses to comments in this final rule. Where we agree with LNA's and ASARCO's suggestions, we have made the appropriate revisions to the regulatory text.

C. Comments on Other Benefits of the Regional Haze Program

Comment: Two commenters expressed concern about the health effects of the pollutants that cause or contribute to regional haze. Earthjustice stated that, in addition to improving visibility, the regional haze program for Arizona will yield significant public health benefits if properly implemented. Earthjustice noted that the same pollutants that impair scenic views at national parks and wilderness areas also cause significant public health impacts, including the following:

- NO_X is a precursor to ground level ozone, which is associated with respiratory diseases, asthma attacks, and decreased lung function.
- NO_X also reacts with ammonia, moisture, and other compounds to form particulates that can cause and worsen respiratory diseases, aggravate heart disease, and lead to premature death.
- SO_2 increases asthma symptoms, leads to increased hospital visits, and can form particulates that aggravate respiratory and heart diseases and cause premature death.
- PM can penetrate deep into the lungs and cause a host of health problems, such as aggravated asthma and heart attacks.

Earthjustice believes that Arizona's regional haze program will reduce the serious public health toll imposed on Arizonans by the State's power plants, copper smelters, and other sources of pollution.

A private citizen expressed concerns specifically about the health effects that are a result of burning coal, which the commenter said is a form of energy that leads to some of the worst air pollution compared to renewable energy sources such as wind, solar and geothermal power. The commenter said that 87 percent of NO_X emissions, 94 percent of SO_2 emissions, and 98 percent of mercury emissions from the utility sector are from utilities that burn coal. The commenter discussed the health effects of these pollutants and specifically mentioned the negative health effects of NO_X, which can cause throat irritation at low levels of exposure and serious damage to the tissues in the respiratory tract, fluid buildup in the lungs, and death at high levels of exposure.

Response: We agree that the same pollutants that contribute to haze also cause significant public health problems and that to the extent that this FIP reduces these pollutants, there are co-benefits for public health. However, for purposes of this regional haze action, we have not considered these benefits.

Comment: Earthjustice stated the regional haze program for Arizona will provide substantial economic benefits, noting that EPA values the regional haze program's health benefits nationally at $8.4 to $9.8 billion annually. Earthjustice also noted that requiring sources to invest in modern pollution controls is a job-creating mechanism in itself, as each installation creates short-term construction jobs, as well as permanent operations and management positions. Earthjustice pointed out that the regional haze program protects national parks and wilderness areas, which are of great natural and cultural value, as well as serving to sustain local economies. According to Earthjustice, in 2012 more than 4.4 million people visited the Grand Canyon. This tourism supported more than 6,000 jobs and resulted in more than $453 million in visitor spending. Another example is that over 1.2 million people visited Petrified Forest and Saguaro National Parks in 2012, which supported more than 1,000 jobs and resulted in more than $76 million in visitor spending. Earthjustice added that studies show that national park visitors prioritize

total annual cost estimate includes both annualized capital costs and variable annual costs (i.e., operation and maintenance costs).

[287] See, e.g., *Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985).

[288] See Regulatory Flexibility Act Screening Analysis for Proposed Arizona Regional Haze Federal Implementation Plan (EPA–R09–OAR–2013–0588).

enjoying beautiful scenery when visiting national parks and will visit parks less during hazy conditions. Earthjustice concluded that the Arizona regional haze program will noticeably improve visibility at Arizona's national parks, and thereby increase revenue to the parks and surrounding communities.

Response: We agree that our action today, together with prior actions by the State and EPA, will provide economic benefits. However, for purposes of this action, we have not calculated these benefits.

Comment: Earthjustice stated the regional haze program for Arizona will provide important environmental benefits because in addition to impairing visibility, NO_X, SO_2, and PM pollution harms plants and animals, soil health, and entire ecosystems in the following ways:

- NO_X and SO_2 are the primary causes of acid rain, which acidifies lakes and streams and can damage certain types of trees and soils. Acid rain also accelerates the decay of building materials and paints, including irreplaceable buildings and statues that are part of our nation's cultural heritage.
- Nitrogen deposition, caused by wet and dry deposition of nitrates derived from NO_X emissions, causes well-known adverse impacts on ecological systems. At times, nitrogen deposition exceeds ''critical loads'' beyond the tolerance of various ecosystems.
- NO_X is also a precursor to ozone. Ground-level ozone affects plants and ecosystems by interfering with plants' ability to produce food and increasing susceptibility to disease and insects. Ozone also contributes to wildfires and bark beetle outbreaks in the West by depressing plant water levels and growth.

Response: We agree that NO_X, SO_2, and PM can have negative impacts on plants and ecosystems. However, while we note the potential for co-benefits to ecosystem health resulting from our action today, we have not taken these potential benefits into account in this action.

D. Miscellaneous Comments

Comment: PCC incorporated by reference its previous comments on EPA's proposal for partial approval and partial disapproval of Arizona's RH SIP published in a final rule dated July 30, 2013. PCC also incorporated the comments that ADEQ made on EPA's proposed action on the Arizona RH SIP. ADEQ's comments were in regard to federalism and deference that EPA owes to the State's decision-making under the regional haze provisions of the CAA, especially as they relate to non-BART sources of NO_X and PCC's facility in particular.

Response: To the extent that previous comments from PCC and ADEQ regarding our Phase 2 SIP action are relevant here, we incorporate by reference our responses to those comments in the final SIP rule published on July 30, 2013.[289]

Comment: One private citizen acknowledged EPA's proposal addressing regional haze in Arizona, but submitted comments regarding controlled burns that occur in the White Mountain area of North Arizona, and in other areas of the country.

Response: We agree that wildfires also contribute to regional haze. However, today's rule does not address wildfires. We will continue to work with the State to address emissions from wildfires.

Comment: One private citizen pointed out that natural resources come in two forms, and some are finite, including coal and natural gas. The commenter noted that as those run out, we have to come up with other sources of energy, so we might as well start thinking about that sooner rather than later. The commenter went on to say that he would rather pay more for energy or not have technology at all if it is going to have a negative effect on health and medical costs. The commenter asked that EPA provide information, not only about the science, but also the social science of using finite resources.

Response: This comment is not relevant to this rulemaking.

X. Summary of Final Action

A. Regional Haze

EPA's is promulgating a FIP to address the remaining portions of the Arizona RH SIP that we disapproved on July 30, 2013. This final rule establishes limits on NO_X and SO_2 emissions at four BART sources and on NO_X emissions at two RP sources. We estimate that these emission limits on all six facilities will result in total annual emission reductions of about 2,900 tons/year of NO_X and 29,300 tons/year of SO_2 as shown in Table 12. While the rule also establishes emission limits for PM_{10} on the four BART facilities, these limits are based on existing controls.

TABLE 12—EMISSIONS REDUCTIONS BY SOURCE

Source	Control technology	Emission reductions (tons/year)	
		NO_X	SO_2
Sundt Unit 4 (BART)	SNCR and DSI	393	1,502
Nelson Lime Plant Kilns 1 and 2	SNCR and Lower sulfur fuel	983	925
Hayden Smelter (multiple units)	Amine scrubber for secondary capture	.....	20,036
Miami Smelter (multiple units)	Improve primary and new secondary capture systems, additional controls as needed.	.....	6,845
PCC Clarkdale Plant Kiln 4	SNCR	810	.....
CPC Rillito Plant Kiln 4	SNCR	729	.....
Total	.....	2,915	29,308

The estimated costs associated with the NO_X and SO_2 emission reductions are shown in Tables 13 and 14 for each of the six sources, and are based on the control technology corresponding with the final emission limits.

[289] 78 FR 46142.

TABLE 13—SUMMARY OF COSTS FOR NO_X CONTROLS

Source	Capital cost ($)	Annualized capital cost ($/year)	Annual O&M ($/year)	Total annualized cost ($/year)	Cost-effectiveness ($/ton)
TEP Sundt Unit 4	$3,079,089	$290,644	$975,124	$1,265,768	$3,222
Nelson Lime Plant Kiln 1	450,000	42, 477	358,459	400,936	817
Nelson Lime Plant Kiln 2	450,000	42,477	354,981	397,458	807
Phoenix Cement Kiln 4	1,500,000	140,000	800,000	940,000	1,162
CalPortland Cement Kiln 4	1,300,000	128,000	1,220,000	1,350,000	1,850

TABLE 14—SUMMARY OF COSTS FOR SO_2 CONTROLS

Source	Capital cost ($)	Annualized capital cost ($/year)	Annual O&M ($/year)	Total annualized cost ($/year)	Cost-effectiveness ($/ton)
TEP Sundt Unit 4	$3,250,000	$306,777	$2,482,107	$2,788,884	$1,857
Nelson Lime Plant Kiln 1	.....	.....	313,096	313,096	856
Nelson Lime Plant Kiln 2	.....	.....	458,179	458,179	819
Hayden Smelter	85,000,000	8,023,399	9,300,000	17,323,399	865
Miami Smelter	47,850,000	4,516,701	2,258,351	6,775,052	990

Based on air quality modeling, the emission reductions should result in improved visibility at 17 Class I areas in four states, including Arizona. The maximum and cumulative visibility benefits (i.e., the sum of benefits over affected areas) are shown in Table 15 for each source and type of control.

TABLE 15—SUMMARY OF VISIBILITY BENEFITS

Source	Maximum visibility benefit, (deciviews)	Cumulative visibility benefit (deciviews)	Control technology
Sundt Unit 4	0.49	1.4	SNCR and DSI.
Sundt Unit 4: BART Alternative	1.06	2.7	Natural gas.
Nelson Lime Plant Kilns 1 and 2 (NO_X)	0.58	0.85	SNCR.
Nelson Lime Plant Kilns 1 and 2 (SO_2)	0.10	0.29	Lower sulfur fuel.
Hayden Smelter (multiple units)	1.44	10.2	Amine scrubber for secondary capture.
Miami Smelter (multiple units)	0.41	1.7	Improve primary and new secondary capture systems, additional controls as needed.
PCC Clarkdale Plant Kiln 4	0.52–1.85	1.7–3.0.	SNCR
CPC Rillito Plant Kiln 4	0.18	0.6	SNCR.

This final rule, along with the previously approved portions of the Arizona RH SIP and a previously finalized FIP, constitute Arizona's regional haze implementation plan for the first planning period that ends in 2018.

B. Interstate Transport

We also are finalizing our determination that the interstate transport visibility requirement of section 110(a)(2)(D)(i)(II) for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS is satisfied by a combination of measures in the Arizona RH SIP and FIP. These measures are in the approved portions of the Arizona RH SIP and in our two FIP actions, this final rule and our final rule on December 5, 2012.

XI. Statutory and Executive Order Reviews

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

This action finalizes a Regional Haze FIP for six individually named facilities in Arizona. This action is not a rule of general applicability and therefore not a ''regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993). This type of action is exempt from review under EO 12866 and is therefore not subject to review under Executive Order 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). Because this action will finalize a Regional Haze FIP for only six facilities in Arizona, the Paperwork Reduction Act does not apply. See 5 CFR 1320.3(c). 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 Office of Management and Budget (OMB) control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act 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. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. None of the facilities subject to this rule is owned by a small entity.[290]

D. Unfunded Mandates Reform Act (UMRA)

Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million (in 1996 dollars) by State, local, or Tribal governments or the private sector in any 1 year. In addition, this rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This rule 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, as specified in Executive Order 13132. In this action, EPA is fulfilling our statutory duty under CAA Section 110(c) to promulgate a partial Regional Haze FIP. Thus, Executive Order 13132 does not apply to this action.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal 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 tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action will have tribal implications, because it will impose substantial direct compliance costs on tribal governments and the Federal government will not provide the funds necessary to pay those costs. PCC is a division of Salt River Pima Maricopa Indian Community (SRPMIC or the Community) and profits from the Phoenix Cement Clarkdale Plant are used to provide government services to SRPMIC's members. Therefore, EPA is providing the following tribal summary impact statement as required by section 5(b).

EPA consulted with tribal officials early in the process of developing this regulation so that they could have meaningful and timely input into its development. In November 2012, we shared our initial analyses with SRPMIC and PCC to ensure that the tribe had an early opportunity to provide feedback on potential controls at the Clarkdale Plant. PCC submitted comments on this initial analysis as part of the rulemaking on the Arizona Regional Haze SIP and we revised our initial analysis based on these comments. On November 6, 2013, the EPA Region 9 Regional Administrator met with the President and other representatives of SRPMIC to discuss the potential impacts of the FIP on SRPMIC. Following this meeting, staff from EPA, SPRMIC and PCC shared further information regarding the Plant and potential impacts of the FIP on SRPMIC.[291]

In our February 18, 2014 proposal, EPA proposed to require installation of SNCR at Kiln 4 at the Clarkdale Plant by December 31, 2018 and sought comment on the possibility of establishing an annual cap on NO_X emissions from Kiln 4 in lieu of a lb/ton emission limit. We explained that an annual cap would allow SRPMIC to delay installation of controls until the Plant's production returns to pre-recession levels and would thus help to address the Community's concerns about the budgetary impacts of control requirements.

In its comments on the proposal, PCC expressed support for the cap ''as long as the final FIP expressly provides that it would be at PCC's election whether to meet this cap effective December 31, 2018 or instead meet the applicable lbs/ton limit effective December 31, 2018.'' [292] EPA subsequently requested clarification of this request from PCC.[293] On May 22, 2014, SRPMIC submitted a letter to EPA describing a proposal that would enable PCC to elect either emission limit and subsequently switch from one to other every five years. In response, EPA suggested that, if SRPMIC wished to change the emission

[290] See Regulatory Flexibility Act Screening Analysis for Proposed Arizona Regional Haze Federal Implementation Plan (EPA–R09–OAR–2013–0588).

[291] See Memorandum to Docket: Summary of Communications and Consultation between EPA, PCC and SRPMIC (January 27, 2014).

[292] PCC Comment Letter at 2.

[293] See Memo to Final—Communications with PCC and SRPMIC.

limit after 2018, it could seek to do so through a SIP revision.[294] Consistent with this approach, in this final rule SRPMIC must elect which limit (i.e. either the lb/ton limit or the ton/year limit) by June 30, 2018. After that point, SRPMIC may seek to change the limit through a revision to the Arizona SIP.

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

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. Also, because this action only applies to six sources and is not a rule of general applicability, it is not economically significant as defined under Executive Order 12866, and the rule also does not have a disproportionate effect on children. However, to the extent this action will limit emissions of NO_X, SO_2, and PM_{10}, the rule will have a beneficial effect on children's health by reducing air pollution that causes or exacerbates childhood asthma and other respiratory issues.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS. This action does not require the public to perform activities conducive to the use of VCS.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule limits emissions of NO_X, PM_{10}, and SO_2 from six facilities in Arizona.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability that only applies to six named facilities.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Sulfur dioxide, Particulate matter, Reporting and recordkeeping requirements, Visibility, Volatile organic compounds.

Dated: June 27, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, 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 D—Arizona

■ 2. Amend § 52.145 by adding paragraphs (i), (j), (k), (l), and (m) and appendices (A) and (B) to read as follow:

§ 52.145 Visibility protection.

* * * * *

(i) *Source-specific federal implementation plan for regional haze at Nelson Lime Plant*—(1) *Applicability.* This paragraph (i) applies to the owner/operator of the lime kilns designated as Kiln 1 and Kiln 2 at the Nelson Lime Plant located in Yavapai County, Arizona.

(2) *Definitions.* Terms not defined in this paragraph (i)(2) shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (i):

[294] Email from Colleen McKaughan to Verle Martz (May 30, 2014).

Ammonia injection shall include any of the following: Anhydrous ammonia, aqueous ammonia, or urea injection.

Continuous emission monitoring system or CEMS means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of NO_X emissions, SO_2 emissions, diluent, and stack gas volumetric flow rate.

Kiln means either of the kilns identified in paragraph (i)(1) of this section.

Kiln 1 means lime kiln 1, as identified in paragraph (i)(1) of this section.

Kiln 2 means lime kiln 2, as identified in paragraph (i)(1) of this section.

Kiln operating day means a 24-hour period between 12 midnight and the following midnight during which there is operation of Kiln 1, Kiln 2, or both kilns at any time.

Kiln operation means any period when any raw materials are fed into the Kiln or any period when any combustion is occurring or fuel is being fired in the Kiln.

Lime product means the product of the lime-kiln calcination process, including calcitic lime, dolomitic lime, and dead-burned dolomite.

NO_X means oxides of nitrogen.

Owner/operator means any person who owns or who operates, controls, or supervises a kiln identified in paragraph (i)(1) of this section.

SO_2 means sulfur dioxide.

(3) *Emission limitations.* (i) The owner/operator of the kilns identified in paragraph (i)(1) of this section shall not emit or cause to be emitted pollutants in excess of the following limitations in pounds of pollutant per ton of lime product (lb/ton), from any kiln. Each emission limit shall be based on a 12-month rolling basis.

Kiln ID		Pollutant emission limit
NO_X	SO_2	
Kiln 1	3.80	9.32
Kiln 2	2.61	9.73

(ii) The owner/operator of the kilns identified in paragraph (i)(1) of this section shall not emit or cause to be emitted pollutants in excess of 3.27 tons of NO_X per day and 10.10 tons of SO_2 per day, combined from both kilns, based on a rolling 30-kiln-operating-day basis.

(iii) In addition, if the owner/operator installs an ammonia injection system to comply with the limits specified in paragraph (i)(3) of this section, the owner/operator shall also comply with the control technology demonstration requirements set forth in paragraph (i)(5) of this section.

(4) *Compliance dates.* (i) The owner/operator of each kiln shall comply with the NO_X emission limitations and other NO_X-related requirements of this paragraph (i) no later than September 4, 2017.

(ii) The owner/operator of each kiln shall comply with the SO_2 emission limitations and other SO_2-related requirements of this paragraph (i) no later than March 3, 2016.

(5) *Control technology demonstration requirements.* If the owner/operator of a kiln installs an ammonia injection system to comply with the limits specified in paragraph (i)(3) of this section, the owner/operator must comply with the following requirements for implementing combustion and process optimization measures.

(i) *Design report.* Prior to commencing construction of an ammonia injection system used to comply with the limits specified in paragraph (i)(3) of this section, the owner/operator shall submit to EPA for review a Design Report as described in Appendix B of this section.

(ii) *Optimization protocol.* Prior to commencement of the Optimization Program, the owner/operator shall submit to EPA for review an Optimization Protocol which shall include the procedures, as described in Appendix B of this section, to be used during the Optimization Program for the purpose of adjusting operating parameters and minimizing emissions.

(iii) *Optimization period.* Following EPA review of the Optimization Protocol, the owner/operator shall operate the ammonia injection system and collect data in accordance with the Optimization Protocol. The owner/operator shall operate the ammonia injection system in such a manner for no longer than 180 kiln operating days, or the duration specified in the Optimization Protocol, whichever is longer in duration.

(iv) *Optimization report.* Within 60 calendar days following the conclusion of the Optimization Program, the owner/operator shall submit to EPA for review an Optimization Report, as described in Appendix B of this section, demonstrating conformance with the Optimization Protocol, and establishing optimized operating parameters for the ammonia injection system as well as other facility processes.

(v) *Demonstration period.* Following EPA review of the Optimization Report, the owner/operator shall operate the ammonia injection system consistent with the optimized operations of the facility and ammonia injection system specified in the Optimization Report. The owner/operator shall operate the ammonia injection system in such a manner for a period of 360 kiln operating days, or the duration specified in the Optimization Report, whichever is longer. The Demonstration Period may be shortened or lengthened as provided for in appendix B of this section.

(vi) *Demonstration report.* Within 60 calendar days following the conclusion of the Demonstration Program, the owner/operator shall submit a Demonstration Report, as described in appendix B of this section, which identifies a proposed rolling 12-month emission limit for NO_X. In a subsequent regulatory action, EPA may seek to lower the NO_X emission limits in paragraph (i)(3) of this section in view of, among other things, the information contained in the Demonstration Report. The proposed rolling 12-month emission limit shall be calculated in accordance with the following formula:

$X = \mu + 1.65\sigma$

Where:

X = Rolling 12-month emission limit, in pounds of NO_X per ton of lime product;

μ = Arithmetic mean of all of the rolling 12-month emission rates;

σ = Standard deviation of all of the rolling 12-month emission rates, as calculated in the following manner:

$$\sigma = \sqrt{\frac{1}{N}\sum_{i=1}^{N}(x_i - \bar{x})^2}$$

Where:

N = The total number of rolling 12-month emission rates;

x_i = Each rolling 12-month emission rate;

$\bar{x}$ = The mean value of all of the rolling 12-month emission rates.

(6) *Compliance determination*—(i) *Continuous emission monitoring system.* At all times after the compliance dates specified in paragraph (i)(4) of this section, the owner/operator of kilns 1 and 2 shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.13 and 40 CFR part 60, appendices B and F, to accurately measure diluent, stack gas volumetric flow rate, and concentration by volume of NO_X and SO_2 emissions into the atmosphere from kilns 1 and 2. The CEMS shall be used by the owner/operator to determine compliance with the emission limitations in paragraph (i)(3) of this section, in combination with data on actual lime production. The owner/

operator must operate the monitoring system and collect data at all required intervals at all times that an affected kiln is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) *Ammonia consumption monitoring.* Upon and after the completion of installation of ammonia injection on a kiln, the owner or operator shall install, and thereafter maintain and operate, instrumentation to continuously monitor and record levels of ammonia consumption for that kiln.

(iii) *Compliance determination for lb per ton NO_X limit.* Compliance with the NO_X emission limits described in paragraph (i)(3)(i) of this section shall be determined based on a rolling 12-month basis. The 12-month rolling NO_X emission rate for each kiln shall be calculated within 30 days following the end of each calendar month in accordance with the following procedure: Step one, sum the hourly pounds of NO_X emitted for the month just completed and the eleven (11) months preceding the month just completed to calculate the total pounds of NO_X emitted over the most recent twelve (12) month period for that kiln; Step two, sum the total lime product, in tons, produced during the month just completed and the eleven (11) months preceding the month just completed to calculate the total lime product produced over the most recent twelve (12) month period for that kiln; Step three, divide the total amount of NO_X calculated from Step one by the total lime product calculated from Step two to calculate the 12-month rolling NO_X emission rate for that kiln. Each 12-month rolling NO_X emission rate shall include all emissions and all lime product that occur during all periods within the 12-month period, including emissions from startup, shutdown, and malfunction.

(iv) *Compliance determination for lb per ton SO_2 limit.* Compliance with the SO_2 emission limits described in paragraph (i)(3)(i) of this section shall be determined based on a rolling 12-month basis. The 12-month rolling SO_2 emission rate for each kiln shall be calculated within 30 days following the end of each calendar month in accordance with the following procedure: Step one, sum the hourly pounds of SO_2 emitted for the month just completed and the eleven (11) months preceding the month just completed to calculate the total pounds of SO_2 emitted over the most recent twelve (12) month period for that kiln; Step two, sum the total lime product, in tons, produced during the month just completed and the eleven (11) months preceding the month just completed to calculate the total lime product produced over the most recent twelve (12) month period for that kiln; Step three, divide the total amount of SO_2 calculated from Step one by the total lime product calculated from Step two to calculate the 12-month rolling SO_2 emission rate for that kiln. Each 12-month rolling SO_2 emission rate shall include all emissions and all lime product that occur during all periods within the 12-month period, including emissions from startup, shutdown, and malfunction.

(v) *Compliance determination for ton per day NO_X limit.* Compliance with the NO_X emission limit described in paragraph (i)(3)(ii) of this section shall be determined based on a rolling 30-kiln-operating-day basis. The rolling 30-kiln operating day NO_X emission rate for the kilns shall be calculated for each kiln operating day in accordance with the following procedure: Step one, sum the hourly pounds of NO_X emitted from both kilns for the current kiln operating day and the preceding twenty-nine (29) kiln-operating-day period for both kilns; Step two, divide the total pounds of NO_X calculated from Step one by two thousand (2,000) to calculate the total tons of NO_X; Step three, divide the total tons of NO_X calculated from Step two by thirty (30) to calculate the rolling 30-kiln operating day NO_X emission rate for both kilns. Each rolling 30-kiln operating day NO_X emission rate shall include all emissions that occur from both kilns during all periods within any kiln operating day, including emissions from startup, shutdown, and malfunction.

(vi) *Compliance determination for ton per day SO_2 limit.* Compliance with the SO_2 emission limit described in paragraph (i)(3)(ii) of this section shall be determined based on a rolling 30-kiln-operating-day basis. The rolling 30-kiln operating day SO_2 emission rate for the kilns shall be calculated for each kiln operating day in accordance with the following procedure: Step one, sum the hourly pounds of SO_2 emitted from both kilns for the current kiln operating day and the preceding twenty-nine (29) kiln operating days, to calculate the total pounds of SO_2 emitted over the most recent thirty (30) kiln operating day period for both kilns; Step two, divide the total pounds of SO_2 calculated from Step one by two thousand (2,000) to calculate the total tons of SO_2; Step three, divide the total tons of SO_2 calculated from Step two by thirty (30) to calculate the rolling 30-kiln operating day SO_2 emission rate for both kilns. Each rolling 30-kiln operating day SO_2 emission rate shall include all emissions that occur from both kilns during all periods within any kiln operating day, including emissions from startup, shutdown, and malfunction.

(7) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) All records of lime production.

(iii) Monthly rolling 12-month emission rates of NO_X and SO_2, calculated in accordance with paragraphs (i)(6)(iii) and (iv) of this section.

(iv) Daily rolling 30-kiln operating day emission rates of NO_X and SO_2 calculated in accordance with paragraphs (i)(6)(v) and (vi) of this section.

(v) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records specified by 40 CFR part 60, appendix F, Procedure 1, as well as the following:

(A) The occurrence and duration of any startup, shutdown, or malfunction, performance testing, evaluations, calibrations, checks, adjustments maintenance, duration of any periods during which a CEMS or COMS is inoperative, and corresponding emission measurements.

(B) Date, place, and time of measurement or monitoring equipment maintenance activity;

(C) Operating conditions at the time of measurement or monitoring equipment maintenance activity;

(D) Date, place, name of company or entity that performed the measurement or monitoring equipment maintenance activity and the methods used; and

(E) Results of the measurement or monitoring equipment maintenance.

(vi) Records of ammonia consumption, as recorded by the instrumentation required in paragraph (i)(6)(ii) of this section.

(vii) Records of all major maintenance activities conducted on emission units, air pollution control equipment, CEMS, and lime production measurement devices.

(viii) All other records specified by 40 CFR part 60, appendix F, Procedure 1.

(8) *Reporting.* All reports required under this section shall be submitted by the owner/operator to the Director,

Enforcement Division (Mail Code ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. All reports required under this section shall be submitted within 30 days after the applicable compliance date(s) in paragraph (i)(4) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) The owner/operator shall submit a report that lists the daily rolling 30-kiln operating day emission rates for NO_X and SO_2, calculated in accordance with paragraphs (i)(6)(iii) and (iv) of this section.

(ii) The owner/operator shall submit a report that lists the monthly rolling 12-month emission rates for NO_X and SO_2, calculated in accordance with paragraphs (i)(6)(v) and (vi) of this section.

(iii) The owner/operator shall submit excess emissions reports for NO_X and SO_2 limits. Excess emissions means emissions that exceed any of the emissions limits specified in paragraph (i)(3) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions; specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the kiln; the nature and cause of any malfunction (if known); and the corrective action taken or preventative measures adopted.

(iv) The owner/operator shall submit a summary of CEMS operation, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(v) The owner/operator shall submit results of all CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(vi) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the semiannual report.

(9) *Notifications.* All notifications required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mail Code ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

(i) The owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_X emission limits in paragraph (i)(3) of this section.

(ii) The owner/operator shall submit semiannual progress reports on construction of any such equipment.

(iii) The owner/operator shall submit notification of initial startup of any such equipment.

(10) *Equipment operations.* (i) At all times, including periods of startup, shutdown, and malfunction, the owner/operator shall, to the extent practicable, maintain and operate the kilns, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the kilns.

(ii) After completion of installation of ammonia injection on a kiln, the owner/operator shall inject sufficient ammonia to achieve compliance with the NO_X emission limits from paragraph (i)(3) of this section for that kiln while preventing excessive ammonia emissions.

(11) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the kiln would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed can be used to establish whether or not the owner/operator has violated or is in violation of any standard or applicable emission limit in the plan.

(j) *Source-specific federal implementation plan for regional haze at H. Wilson Sundt Generating Station*—(1) *Applicability.* This paragraph (j) applies to the owner/operator of the electricity generating unit (EGU) designated as Unit I4 at the H. Wilson Sundt Generating Station located in Tucson, Pima County, Arizona.

(2) *Definitions.* Terms not defined in this paragraph (j)(2) shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (j):

Ammonia injection shall include any of the following: Anhydrous ammonia, aqueous ammonia, or urea injection.

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the unit.

Continuous emission monitoring system or CEMS means the equipment required by 40 CFR part 75 and this paragraph (j).

MMBtu means one million British thermal units.

Natural gas means a naturally occurring fluid mixture of hydrocarbons as defined in 40 CFR 72.2.

NO_X means oxides of nitrogen.

Owner/operator means any person who owns or who operates, controls, or supervises the EGU identified in paragraph (j)(1) of this section.*PM* means total filterable particulate matter.

PM_{10} means total particulate matter less than 10 microns in diameter.

SO_2 means sulfur dioxide.

Unit means the EGU identified paragraph (j)(1) of this section.

(3) *Emission limitations.* The owner/operator of the unit shall not emit or cause to be emitted pollutants in excess of the following limitations, in pounds of pollutant per million British thermal units (lb/MMBtu), from the subject unit.

Pollutant	Pollutant emission limit
NO_X	0.36
PM	0.030
SO_2	0.23

(4) *Alternative emission limitations.* The owner/operator of the unit may choose to comply with the following limitations in lieu of the emission limitations listed in paragraph (j)(3) of this section.

(i) The owner/operator of the unit shall combust only natural gas or natural gas combined with landfill gas in the subject unit.

(ii) The owner/operator of the unit shall not emit or cause to be emitted pollutants in excess of the following limitations, in pounds of pollutant per million British thermal units (lb/MMBtu), from the subject unit.

Pollutant	Pollutant emission limit
NO_X	0.25
PM_{10}	0.010
SO_2	0.057

(iii) If the results of the initial performance test conducted in accordance with paragraph (j)(8)(iv) of this section show PM_{10} emissions greater than the limit in paragraph (j)(4)(ii) of this section, the owner/operator may elect to comply with an emission limit equal to the result of the initial performance test, in lieu of the PM_{10} emission limit in paragraph (j)(4)(ii).

(5) *Compliance dates.* (i) The owner/operator of the unit subject to this paragraph (j)(5) shall comply with the NO_X and SO_2 emission limitations of paragraph (j)(3) of this section no later than September 4, 2017.

(ii) The owner/operator of the unit subject to this paragraph (j)(5) shall comply with the PM emission limitation of paragraph (j)(3) of this section no later than April 16, 2015.

(6) *Alternative compliance dates.* If the owner/operator chooses to comply with paragraph (j)(4) of this section in lieu of paragraph (j)(3) of this section, the owner/operator of the unit shall comply with the NO_X, SO_2, and PM_{10} emission limitations of paragraph (j)(4) of this section no later than December 31, 2017.

(7) *Compliance determination*—(i) *Continuous emission monitoring system.* (A) At all times after the compliance date specified in paragraph (j)(5)(i) of this section, the owner/operator of the unit shall maintain, calibrate, and operate CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure SO_2, NO_X, diluent, and stack gas volumetric flow rate from the unit. All valid CEMS hourly data shall be used to determine compliance with the emission limitations for NO_X and SO_2 in paragraph (j)(3) of this section. When the CEMS is out-of-control as defined by 40 CFR part 75, the CEMS data shall be treated as missing data and not used to calculate the emission average. Each required CEMS must obtain valid data for at least 90 percent of the unit operating hours, on an annual basis.

(B) The owner/operator of the unit shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. In addition to the requirements in part 75 of this chapter, relative accuracy test audits shall be calculated for both the NO_X and SO_2 pounds per hour measurement and the heat input measurement. The CEMS monitoring data shall not be bias adjusted. Calculations of relative accuracy for lb/hour of NO_X, SO_2, and heat input shall be performed each time the CEMS undergo relative accuracy testing.

(ii) *Ammonia consumption monitoring.* Upon and after the completion of installation of ammonia injection on the unit, the owner/operator shall install, and thereafter maintain and operate, instrumentation to continuously monitor and record levels of ammonia consumption for that unit.

(iii) *Compliance determination for NO_X.* Compliance with the NO_X emission limit described in paragraph (j)(3) of this section shall be determined based on a rolling 30 boiler-operating-day basis. The 30-boiler-operating-day rolling NO_X emission rate for the unit shall be calculated for each boiler operating day in accordance with the following procedure: Step one, sum the hourly pounds of NO_X emitted for the current boiler operating day and the preceding twenty-nine (29) boiler operating days to calculate the total pounds of NO_X emitted over the most recent thirty (30) boiler-operating-day period for that unit; Step two, sum the total heat input, in MMBtu, during the current boiler operating day and the preceding twenty-nine (29) boiler operating days to calculate the total heat input over the most recent thirty (30) boiler-operating-day period for that unit; Step three, divide the total amount of NO_X calculated from Step one by the total heat input calculated from Step two to calculate the rolling 30-boiler-operating-day NO_X emission rate, in pounds per MMBtu for that unit. Each rolling 30-boiler-operating-day NO_X emission rate shall include all emissions and all heat input that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction. If a valid NO_X pounds per hour or heat input is not available for any hour for the unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the rolling 30-boiler-operating-day emission rate.

(iv) *Compliance determination for SO_2.* Compliance with the SO_2 emission limit described in paragraph (j)(3) of this section shall be determined based on a rolling 30 boiler-operating-day basis. The rolling 30-boiler-operating-day SO_2 emission rate for the unit shall be calculated for each boiler operating day in accordance with the following procedure: Step one, sum the hourly pounds of SO_2 emitted for the current boiler operating day and the preceding twenty-nine (29) boiler operating days to calculate the total pounds of SO_2 emitted over the most recent thirty (30) boiler-operating-day period for that unit; Step two, sum the total heat input, in MMBtu, during the current boiler operating day and the preceding twenty-nine (29) boiler operating days to calculate the total heat input over the most recent thirty (30) boiler-operating-day period for that unit; Step three, divide the total amount of SO_2 calculated from Step one by the total heat input calculated from Step two to calculate the rolling 30-boiler-operating-day SO_2 emission rate, in pounds per MMBtu for that unit. Each rolling 30-boiler-operating-day SO_2 emission rate shall include all emissions and all heat input that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction. If a valid SO_2 pounds per hour or heat input is not available for any hour for the unit, that heat input and SO_2 pounds per hour shall not be used in the calculation of the rolling 30-boiler-operating-day emission rate.

(v) *Compliance determination for PM.* Compliance with the PM emission limit described in paragraph (j)(3) of this section shall be determined from annual performance stack tests. Within sixty (60) days either preceding or following the compliance deadline specified in paragraph (j)(5)(ii) of this section, and on at least an annual basis thereafter, the owner/operator of the unit shall conduct a stack test on the unit to measure PM using EPA Methods 1 through 5, in 40 CFR part 60, appendix A. Each test shall consist of three runs, with each run at least one hundred twenty (120) minutes in duration and each run collecting a minimum sample of sixty (60) dry standard cubic feet. Results shall be reported in lb/MMBtu using the calculation in 40 CFR part 60, appendix A, Method 19.

(8) *Alternative compliance determination.* If the owner/operator chooses to comply with the emission limits of paragraph (j)(4) of this section, this paragraph (j)(8) may be used in lieu of paragraph (j)(7) of this section to demonstrate compliance with the emission limits in paragraph (j)(4) of this section.

(i) *Continuous emission monitoring system.* (A) At all times after the compliance date specified in paragraph (j)(6) of this section, the owner/operator of the unit shall maintain, calibrate, and operate CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure NO_X, diluent, and stack gas volumetric flow rate from the unit. All valid CEMS hourly data shall be used to determine compliance

with the emission limitation for NO_X in paragraph (j)(4) of this section. When the CEMS is out-of-control as defined by 40 CFR part 75, the CEMS data shall be treated as missing data and not used to calculate the emission average. Each required CEMS must obtain valid data for at least ninety (90) percent of the unit operating hours, on an annual basis.

(B) The owner/operator of the unit shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. In addition to these part 75 requirements, relative accuracy test audits shall be calculated for both the NO_X pounds per hour measurement and the heat input measurement. The CEMS monitoring data shall not be bias adjusted. Calculations of relative accuracy for lb/hr of NO_X and heat input shall be performed each time the CEMS undergo relative accuracy testing.

(ii) *Compliance determination for NO_X.* Compliance with the NO_X emission limit described in paragraph (j)(4) of this section shall be determined based on a rolling 30 boiler-operating-day basis. The rolling 30-boiler-operating-day NO_X emission rate for the unit shall be calculated for each boiler operating day in accordance with the following procedure: Step one, sum the hourly pounds of NO_X emitted for the current boiler operating day and the preceding twenty-nine (29) boiler-operating-days to calculate the total pounds of NO_X emitted over the most recent thirty (30) boiler-operating-day period for that unit; Step two, sum the total heat input, in MMBtu, during the current boiler operating day and the preceding twenty-nine (29) boiler-operating-days to calculate the total heat input over the most recent thirty (30) boiler-operating-day period for that unit; Step three, divide the total amount of NO_X calculated from Step one by the total heat input calculated from Step two to calculate the rolling 30-boiler-operating-day NO_X emission rate, in pounds per MMBtu for that unit. Each rolling 30-boiler-operating-day NO_X emission rate shall include all emissions and all heat input that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction. If a valid NO_X pounds per hour or heat input is not available for any hour for the unit, that heat input and NO_X pounds per hour shall not be used in the calculation of the rolling 30-boiler-operating-day emission rate.

(iii) *Compliance determination for SO_2.* Compliance with the SO_2 emission limit for the unit shall be determined from fuel sulfur documentation demonstrating the use of either natural gas or natural gas combined with landfill gas.

(iv) *Compliance determination for PM_{10}.* Compliance with the PM_{10} emission limit for the unit shall be determined from performance stack tests. Within sixty (60) days following the compliance deadline specified in paragraph (j)(6) of this section, and at the request of the Regional Administrator thereafter, the owner/operator of the unit shall conduct a stack test on the unit to measure PM_{10} using EPA Methods 1 through 4, 201A, and Method 202, per 40 CFR part 51, appendix M. Each test shall consist of three runs, with each run at least one hundred twenty (120) minutes in duration and each run collecting a minimum sample of sixty (60) dry standard cubic feet. Results shall be reported in lb/MMBtu using the calculation in 40 CFR part 60, appendix A, Method 19.

(9) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(i) CEMS data measuring NO_X in lb/hr, SO_2 in lb/hr, and heat input rate per hour.

(ii) Daily rolling 30-boiler operating day emission rates of NO_X and SO_2 calculated in accordance with paragraphs (j)(7)(iii) and (iv) of this section.

(iii) Records of the relative accuracy test for NO_X lb/hr and SO_2 lb/hr measurement, and hourly heat input measurement.

(iv) Records of quality assurance and quality control activities for emissions systems including, but not limited to, any records required by 40 CFR part 75.

(v) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(vi) Any other records required by 40 CFR part 75.

(vii) Records of ammonia consumption for the unit, as recorded by the instrumentation required in paragraph (j)(7)(ii) of this section.

(viii) All PM stack test results.

(10) *Alternative recordkeeping requirements.* If the owner/operator chooses to comply with the emission limits of paragraph (j)(4) of this section, the owner/operator shall maintain the records listed in this paragraph (j)(10) in lieu of the records contained in paragraph (j)(9) of this section. The owner/operator shall maintain the following records for at least five years:

(i) CEMS data measuring NO_X in lb/hr and heat input rate per hour.

(ii) Daily rolling 30-boiler operating day emission rates of NO_X calculated in accordance with paragraph (j)(8)(ii) of this section.

(iii) Records of the relative accuracy test for NO_X lb/hr measurement and hourly heat input measurement.

(iv) Records of quality assurance and quality control activities for emissions systems including, but not limited to, any records required by 40 CFR part 75.

(v) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(vi) Any other records required by 40 CFR part 75.

(vii) Records sufficient to demonstrate that the fuel for the unit is natural gas or natural gas combined with landfill gas.

(viii) All PM_{10} stack test results.

(11) *Notifications.* All notifications required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mail Code ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901.

(i) By March 31, 2017, the owner/operator shall submit notification by letter whether it will comply with the emission limits in paragraph (j)(3) of this section or whether it will comply with the emission limits in paragraph (j)(4) of this section. In the event that the owner/operator does not submit timely and proper notification by March 31, 2017, the owner/operator may not choose to comply with the alternative emission limits in paragraph (j)(4) of this section and shall comply with the emission limits in paragraph (j)(3) of this section.

(ii) The owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with either the NO_X or SO_2 emission limits in paragraph (j)(3) of this section.

(iii) The owner/operator shall submit semiannual progress reports on construction of any such equipment.

(iv) The owner/operator shall submit notification of initial startup of any such equipment.

(v) The owner/operator shall submit notification of its intent to comply with the PM_{10} emission limit in paragraph (j)(4)(iii) of this section within one hundred twenty (120) days following the compliance deadline specified in paragraph (j)(6) of this section. The notification shall include results of the initial performance test and the resulting applicable emission limit.

(12) *Reporting.* All reports required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mail Code ENF–

2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. All reports required under this section shall be submitted within 30 days after the applicable compliance date(s) in paragraph (j)(5) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) The owner/operator shall submit a report that lists the daily rolling 30-boiler operating day emission rates for NO_X and SO_2.

(ii) The owner/operator shall submit excess emission reports for NO_X and SO_2 limits. Excess emissions means emissions that exceed the emission limits specified in paragraph (j)(3) of this section. Excess emission reports shall include the magnitude, date(s), and duration of each period of excess emissions; specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit; the nature and cause of any malfunction (if known); and the corrective action taken or preventative measures adopted.

(iii) The owner/operator shall submit a summary of CEMS operation, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(iv) The owner/operator shall submit the results of any relative accuracy test audits performed during the two preceding calendar quarters.

(v) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the semiannual report.

(vi) The owner/operator shall submit results of any PM stack tests conducted for demonstrating compliance with the PM limit specified in paragraph (j)(3) of this section.

(13) *Alternative reporting requirements.* If the owner/operator chooses to comply with the emission limits of paragraph (j)(4) of this section, the owner/operator shall submit the reports listed in this paragraph (j)(13) in lieu of the reports contained in paragraph (j)(12) of this section. All reports required under this paragraph (j)(13) shall be submitted by the owner/operator to the Director, Enforcement Division (Mail Code ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. All reports required under this paragraph (j)(13) shall be submitted within 30 days after the applicable compliance date(s) in paragraph (j)(6) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) The owner/operator shall submit a report that lists the daily rolling 30-boiler operating day emission rates for NO_X.

(ii) The owner/operator shall submit excess emissions reports for NO_X limits. Excess emissions means emissions that exceed the emission limit specified in paragraph (j)(4) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions; specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit; the nature and cause of any malfunction (if known); and the corrective action taken or preventative measures adopted.

(iii) The owner/operator shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(iv) The owner/operator shall submit the results of any relative accuracy test audits performed during the two preceding calendar quarters.

(v) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the semiannual report.

(vi) The owner/operator shall submit results of any PM_{10} stack tests conducted for demonstrating compliance with the PM_{10} limit specified in paragraph (j)(4) of this section.

(14) *Equipment operations.* (i) At all times, including periods of startup, shutdown, and malfunction, the owner/operator shall, to the extent practicable, maintain and operate the unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(ii) After completion of installation of ammonia injection on a unit, the owner/operator shall inject sufficient ammonia to achieve compliance with the NO_X emission limit contained in paragraph (j)(3) of this section for that unit while preventing excessive ammonia emissions.

(15) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed can be used to establish whether or not the owner/operator has violated or is in violation of any standard or applicable emission limit in the plan.

(k) *Source-specific federal implementation plan for regional haze at Clarkdale Cement Plant and Rillito Cement Plant*—(1) *Applicability.* This paragraph (k) applies to each owner/operator of the following cement kilns in the state of Arizona: Kiln 4 located at the cement plant in Clarkdale, Arizona, and kiln 4 located at the cement plant in Rillito, Arizona.

(2) *Definitions.* Terms not defined in this paragraph (k)(2) shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (k):

Ammonia injection shall include any of the following: Anhydrous ammonia, aqueous ammonia or urea injection.

Continuous emission monitoring system or CEMS means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of NO_X

emissions, diluent, or stack gas volumetric flow rate.

Kiln operating day means a 24-hour period between 12 midnight and the following midnight during which the kiln operates at any time.

Kiln operation means any period when any raw materials are fed into the kiln or any period when any combustion is occurring or fuel is being fired in the kiln.

NO_X means nitrogen oxides.

Owner/operator means any person who owns or who operates, controls, or supervises a cement kiln identified in paragraph (k)(1) of this section.

Unit means a cement kiln identified in paragraph (k)(1) of this section.

(3) *Emissions limitations.* (i) The owner/operator of kiln 4 of the Clarkdale Plant, as identified in paragraph (k)(1) of this section, shall not emit or cause to be emitted from kiln 4 NO_X in excess of 2.12 pounds of NO_X per ton of clinker produced, based on a rolling 30-kiln operating day basis. In addition, if the owner/operator installs an ammonia injection system to comply with the limits specified in this paragraph (k)(3), the owner/operator shall also comply with the control technology demonstration requirements set forth in paragraph (k)(6) of this section.

(ii) The owner/operator of kiln 4 of the Rillito Plant, as identified in paragraph (k)(1) of this section, shall not emit or cause to be emitted from kiln 4 NO_X in excess of 3.46 pounds of NO_X per ton of clinker produced, based on a rolling 30-kiln operating day basis. In addition, if the owner/operator installs an ammonia injection system to comply with the limits specified in this paragraph (k)(3), the owner/operator shall also comply with the control technology demonstration requirements set forth in paragraph (k)(6) of this section.

(4) *Alternative emissions limitation.* In lieu of the emission limitation listed in paragraph (k)(3)(i) of this section, the owner/operator of kiln 4 of the Clarkdale Plant may choose to comply with the following limitation by providing notification per paragraph (k)(13)(iv) of this section. The owner/operator of kiln 4 of the Clarkdale Plant, as identified in paragraph (k)(1) of this section, shall not emit or cause to be emitted from kiln 4 NO_X in excess of 810 tons per year, based on a rolling 12 month basis.

(5) *Compliance date.* (i) The owner/operator of each unit identified in paragraph (k)(1) of this section shall comply with the NO_X emissions limitations and other NO_X-related requirements of paragraph (k)(3) of this section no later than December 31, 2018.

(ii) If the owner/operator of the Clarkdale Plant chooses to comply with the emission limit of paragraph (k)(4) of this section in lieu of paragraph (k)(3)(i) of this section, the owner/operator shall comply with the NO_X emissions limitations and other NO_X-related requirements of paragraph (k)(4) of this section no later than December 31, 2018.

(6) *Control technology demonstration requirements.* If the owner/operator of a unit installs an ammonia injection system to comply with the limits specified in paragraph (k)(3) of this section, the owner/operator must comply with the following requirements for implementing combustion and process optimization measures.

(i) *Design report.* Prior to commencing construction of an ammonia injection system used to comply with the limits specified in paragraph (k)(3) of this section, the owner/operator shall submit to EPA for review a Design Report as described in appendix A of this section.

(ii) *Optimization protocol.* Prior to commencement of the Optimization Program, the owner/operator shall submit to EPA for review an Optimization Protocol which shall include the procedures, as described in appendix A of this section, to be used during the Optimization Program for the purpose of adjusting operating parameters and minimizing emissions.

(iii) *Optimization period.* Following EPA review of the Optimization Protocol, the owner/operator shall operate the ammonia injection system and collect data in accordance with the Optimization Protocol. The owner/operator shall operate the ammonia injection system in such a manner for no longer than 180 kiln operating days, or the duration specified in the Optimization Protocol, whichever is longer in duration.

(iv) *Optimization report.* Within 60 calendar days following the conclusion of the Optimization Program, the owner/operator shall submit to EPA for review an Optimization Report, as described in appendix A of this section, demonstrating conformance with the Optimization Protocol, and establishing optimized operating parameters for the ammonia injection system as well as other facility processes.

(v) *Demonstration period.* Following EPA review of the Optimization Report, the owner/operator shall operate the ammonia injection system consistent with the optimized operations of the facility and ammonia injection system specified in the Optimization Report. The owner/operator shall operate the ammonia injection system in such a manner for a period of 270 kiln operating days, or the duration specified in the Optimization Report, whichever is longer. The Demonstration Period may be shortened or lengthened as provided for in appendix A of this section.

(vi) *Demonstration report.* Within 60 calendar days following the conclusion of the Demonstration Program, the owner/operator shall submit a Demonstration Report, as described in appendix A of this section, which identifies a proposed rolling 30-kiln operating day emission limit for NO_X. In a subsequent regulatory action, EPA may seek to lower the emission limits in paragraphs (k)(3) and/or (k)(4) of this section in view of, among other things, the information contained in the Demonstration Report. The proposed rolling 30-kiln operating day emission limit shall be calculated in accordance with the following formula:

$$X = \mu + 1.65\sigma$$

Where:

X = Rolling 30-kiln operating day emission limit, in pounds of NOx per ton of clinker;

μ = Arithmetic mean of all of the rolling 30-kiln operating day emission rates;

σ = Standard deviation of all of the rolling 30-kiln operating day emission rates, as calculated in the following manner:

$$\sigma = \sqrt{\frac{1}{N}\sum_{i=1}^{N}(x_i - \bar{x})^2}$$

Where:

N = The total number of rolling 30-kiln operating day emission rates;

x_i = Each rolling 30-kiln operating day emission rate;

$\bar{x}$ = The mean value of all of the rolling 30-kiln operating day emission rates.

(7) *Compliance determination*—(i) *Continuous emission monitoring system.* (A) At all times after the compliance date specified in paragraph (k)(5) of this section, the owner/operator of the unit at the Clarkdale Plant shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.63(f) and (g), to accurately measure concentration by volume of NO_X, diluent, and stack gas volumetric flow rate from the in-line/raw mill stack, as well as the stack gas volumetric flow rate from the coal mill stack. The CEMS shall be used by the owner/operator to determine compliance with the emission limitation in paragraph (k)(3) of this section, in combination with data on actual clinker production. The owner/operator must operate the

monitoring system and collect data at all required intervals at all times the affected unit is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(B) At all times after the compliance date specified in paragraph (k)(5) of this section, the owner/operator of the unit at the Rillito Plant shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.63(f) and (g), to accurately measure concentration by volume of NO_X, diluent, and stack gas volumetric flow rate from the unit. The CEMS shall be used by the owner/operator to determine compliance with the emission limitation in paragraph (k)(3) of this section, in combination with data on actual clinker production. The owner/operator must operate the monitoring system and collect data at all required intervals at all times the affected unit is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) *Methods.* (A) The owner/operator of each unit shall record the daily clinker production rates.

(B)(*1*) The owner/operator of each unit shall calculate and record the 30-kiln operating day average emission rate of NO_X, in lb/ton of clinker produced, as the total of all hourly emissions data for the cement kiln in the preceding 30-kiln operating days, divided by the total tons of clinker produced in that kiln during the same 30-day operating period, using the following equation:

$$E_D = k\frac{1}{(n)}\sum_{i=1}^{n}\frac{C_i Q_i}{P_i}$$

Where:

E[D] = 30 kiln operating day average emission rate of NO_X, lb/ton of clinker;
C[i] = Concentration of NO_X for hour i, ppm;
Q[i] = Volumetric flow rate of effluent gas for hour i, where C[i] and Q[i] are on the same basis (either wet or dry), scf/hr;
P[i] = Total kiln clinker produced during production hour i, ton/hr;
k = Conversion factor, 1.194 x 10<-7> for NO_X; and
n = Number of kiln operating hours over 30 kiln operating days, n = 1 up to 720.

(*2*) For each kiln operating hour for which the owner/operator does not have at least one valid 15-minute CEMS data value, the owner/operator must use the average emissions rate (lb/hr) from the most recent previous hour for which valid data are available. Hourly clinker production shall be determined by the owner/operator in accordance with the requirements found at 40 CFR 60.63(b).

(C) At the end of each kiln operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/ton clinker from the arithmetic average of all valid hourly emission rates for the current kiln operating day and the previous 29 successive kiln operating days.

(D) Upon and after the completion of installation of ammonia injection on a unit, the owner/operator shall install, and thereafter maintain and operate, instrumentation to continuously monitor and record levels of ammonia consumption that unit.

(8) *Alternative compliance determination.* If the owner/operator of the Clarkdale Plant chooses to comply with the emission limits of paragraph (k)(4) of this section, this paragraph (k)(8) may be used in lieu of paragraph (k)(7) of this section to demonstrate compliance with the emission limits in paragraph (k)(4) of this section.

(i) *Continuous emission monitoring system.* At all times after the compliance date specified in paragraph (k)(5) of this section, the owner/operator of the unit at the Clarkdale Plant shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.63(f) and (g), to accurately measure concentration by volume of NO_X, diluent, and stack gas volumetric flow rate from the in-line/raw mill stack, as well as the stack gas volumetric flow rate from the coal mill stack. The CEMS shall be used by the owner/operator to determine compliance with the emission limitation in paragraph (k)(3) of this section, in combination with data on actual clinker production. The owner/operator must operate the monitoring system and collect data at all required intervals at all times the affected unit is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) *Method.* Compliance with the ton per year NO_X emission limit described in paragraph (k)(4) of this section shall be determined based on a rolling 12 month basis. The rolling 12-month NO_X emission rate for the kiln shall be calculated within 30 days following the end of each calendar month in accordance with the following procedure: Step one, sum the hourly pounds of NO_X emitted for the month just completed and the eleven (11) months preceding the month just completed, to calculate the total pounds of NO_X emitted over the most recent twelve (12) month period for that kiln; Step two, divide the total pounds of NO_X calculated from Step one by two thousand (2,000) to calculate the total tons of NO_X. Each rolling 12-month NO_X emission rate shall include all emissions that occur during all periods within the 12-month period, including emissions from startup, shutdown and malfunction.

(iii) Upon and after the completion of installation of ammonia injection on the unit, the owner/operator shall install, and thereafter maintain and operate, instrumentation to continuously monitor and record levels of ammonia consumption for that unit.

(9) *Recordkeeping.* The owner/operator of each unit shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; emissions and parameters sampled or measured; and results.

(ii) All records of clinker production.

(iii) Daily 30-day rolling emission rates of NO_X, calculated in accordance with paragraph (k)(7)(ii) of this section.

(iv) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records specified by 40 CFR part 60, appendix F, Procedure 1.

(v) Records of ammonia consumption, as recorded by the instrumentation required in paragraph (k)(7)(ii)(D) of this section.

(vi) Records of all major maintenance activities conducted on emission units, air pollution control equipment, CEMS and clinker production measurement devices.

(vii) Any other records specified by 40 CFR part 60, subpart F, or 40 CFR part 60, appendix F, Procedure 1.

(10) *Alternative recordkeeping requirements.* If the owner/operator of the Clarkdale Plant chooses to comply with the emission limits of paragraph (k)(4) of this section, the owner/operator shall maintain the records listed in this paragraph (k)(10) in lieu of the records contained in paragraph (k)(9) of this section. The owner or operator shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; emissions and parameters sampled or measured; and results.

(ii) Monthly rolling 12-month emission rates of NO_X, calculated in accordance with paragraph (k)(8)(ii) of this section.

(iii) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records specified by 40 CFR part 60, appendix F, Procedure 1.

(iv) Records of ammonia consumption, as recorded by the instrumentation required in paragraph (k)(8)(iii) of this section.

(v) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS measurement devices.

(vi) Any other records specified by 40 CFR part 60, subpart F, or 40 CFR part 60, appendix F, Procedure 1.

(11) *Reporting.* All reports required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mailcode ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. All reports required under this section shall be submitted within 30 days after the applicable compliance date in paragraph (k)(5) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) The owner/operator shall submit a report that lists the daily 30-day rolling emission rates for NO_X.

(ii) The owner/operator shall submit excess emissions reports for NO_X limits. Excess emissions means emissions that exceed the emissions limits specified in paragraph (k)(3) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(iii) The owner/operator shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(iv) The owner/operator shall also submit results of any CEMS performance tests specified by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(v) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the reports required by paragraph (k)(9)(ii) of this section.

(12) *Alternative reporting requirements.* If the owner/operator of the Clarkdale Plant chooses to comply with the emission limits of paragraph (k)(4) of this section, the owner/operator shall submit the reports listed in this paragraph (k)(12) in lieu of the reports contained in paragraph (k)(11) of this section. All reports required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mailcode ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. All reports required under this section shall be submitted within 30 days after the applicable compliance date in paragraph (k)(5) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) The owner/operator shall submit a report that lists the monthly rolling 12-month emission rates for NO_X.

(ii) The owner/operator shall submit excess emissions reports for NO_X limits. Excess emissions means emissions that exceed the emissions limits specified in paragraph (k)(3) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(iii) The owner/operator shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(iv) The owner/operator shall also submit results of any CEMS performance tests specified by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(v) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the reports required by paragraph (k)(9)(ii) of this section.

(13) *Notifications.* (i) The owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_X emission limits in paragraph (k)(3) of this section.

(ii) The owner/operator shall submit semiannual progress reports on construction of any such equipment.

(iii) The owner/operator shall submit notification of initial startup of any such equipment.

(iv) By June 30, 2018, the owner/operator of the Clarkdale Plant shall notify the Regional Administrator by letter whether it will comply with the emission limits in paragraph (k)(3)(i) of this section or whether it will comply with the emission limits in paragraph (k)(4) of this section. In the event that the owner/operator does not submit timely and proper notification by June 30, 2018, the owner/operator of the Clarkdale Plant may not choose to comply with the alternative emission limits in paragraph (k)(4) of this section and shall comply with the emission limits in paragraph (k)(3)(i) of this section.

(14) *Equipment operation.* (i) At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution

control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(ii) After completion of installation of ammonia injection on a unit, the owner or operator shall inject sufficient ammonia to achieve compliance with NO_X emission limits set forth in paragraph (k)(3) of this section for that unit while preventing excessive ammonia emissions.

(15) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(l) *Source-specific federal implementation plan for regional haze at Hayden Copper Smelter*—(1) *Applicability.* This paragraph (l) applies to each owner/operator of batch copper converters #1, 3, 4 and 5 and anode furnaces #1 and #2 at the copper smelting plant located in Hayden, Gila County, Arizona.

(2) *Definitions.* Terms not defined in this paragraph (l)(2) shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (l):

Anode furnace means a furnace in which molten blister copper is refined through introduction of a reducing agent such as natural gas.

Batch copper converter means a Peirce-Smith converter in which copper matte is oxidized to form blister copper by a process that is performed in discrete batches using a sequence of charging, blowing, skimming, and pouring.

Blister copper means an impure form of copper, typically between 96 and 98 percent pure copper that is the output of the converters.

Calendar day means a 24 hour period that begins and ends at midnight, local standard time.

Capture system means the collection of components used to capture gases and fumes released from one or more emission points, and to convey the captured gases and fumes to one or more control devices. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: Duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Continuous emission monitoring system or CEMS means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2 emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

Copper matte means a material predominately composed of copper and iron sulfides produced by smelting copper ore concentrates.

NO_X means nitrogen oxides.

Owner/operator means any person who owns or who operates, controls, or supervises the equipment identified in paragraph (l)(1) of this section.

Regional Administrator means the Regional Administrator of EPA Region 9 or his or her designated representative.

SO_2 means sulfur dioxide.

(3) *Emission capture.* (i) The owner/operator must operate a capture system that has been designed to maximize collection of process off gases vented from each converter identified in paragraph (l)(1) of this section. The capture system must include primary and secondary capture systems as described in 40 CFR 63.1444(d)(2).

(ii) The operation of the batch copper converters, primary capture system, and secondary capture system shall be optimized to capture the maximum amount of process off gases vented from each converter at all times.

(iii) The owner/operator shall prepare a written operation and maintenance plan according to the requirements in paragraph (l)(3)(iv) of this section and submit this plan to the Regional Administrator 180 days prior to the compliance date in paragraph (l)(5)(ii) of this section. The Regional Administrator shall approve or disapprove the plan within 180 days of submittal. At all times when one or more converters are blowing, the owner/operator must operate the capture system consistent with this plan.

(iv) The written operations and maintenance plan must address the following requirements as applicable to the capture system or control device.

(A) *Preventative maintenance.* The owner/operator must perform preventative maintenance for each capture system and control device according to written procedures specified in owner/operator's operation and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions for routine and long-term maintenance.

(B) *Capture system inspections.* The owner/operator must perform capture system inspections for each capture system in accordance with the requirements of 40 CFR 63.1447(b)(2).

(C) *Copper converter department capture system operating limits.* The owner/operator must establish, according to the requirements 40 CFR 63.1447(b)(3)(i) through (iii), operating limits for the capture system that are representative and reliable indicators of the optimized performance of the capture system, consistent with paragraph (l)(3)(ii) of this section, when it is used to collect the process off-gas vented from batch copper converters during blowing.

(4) *Emission limitations and work practice standards.* (i) SO_2 emissions collected by any primary capture system required by paragraph (l)(3) of this section must be controlled by one or more control devices and reduced by at least 99.8 percent, based on a 365-day rolling average.

(ii) SO_2 emissions collected by any secondary capture system required by paragraph (l)(3) of this section must be controlled by one or more control devices and reduced by at least 98.5 percent, based on a 365-day rolling average.

(iii) The owner/operator must not cause or allow to be discharged to the atmosphere from any primary capture system required by paragraph (l)(3) of this section off-gas that contains nonsulfuric acid particulate matter in excess of 6.2 mg/dscm as measured using the test methods specified in 40 CFR 63.1450(b).

(iv) The owner/operator must not cause or allow to be discharged to the atmosphere from any secondary capture system required by paragraph (l)(3) of this section off-gas that contains particulate matter in excess of 23 mg/dscm as measured using the test methods specified in 40 CFR 63.1450(a).

(v) Total NO_X emissions from anode furnaces #1 and #2 and the batch copper converters shall not exceed 40 tons per 12-continuous month period.

(vi) Anode furnaces #1 and #2 shall only be charged with blister copper or higher purity copper. This charging

limitation does not extend to the use or addition of poling or fluxing agents necessary to achieve final casting chemistry.

(5) *Compliance dates.* (i) The owner/operator of each batch copper converter identified in paragraph (l)(1) of this section shall comply with the emissions limitations in paragraphs (l)(4)(ii) and (l)(4)(iv) of this section and other requirements of this section related to the secondary capture system no later than September 3, 2018.

(ii) The owner/operator of each batch copper converter identified in paragraph (l)(1) of this section shall comply with the emissions limitations in paragraphs (l)(4)(i), (l)(4)(iii), (l)(4)(v), and (l)(4)(vi) of this section and other requirements of this section, except those requirements related to the secondary capture system, no later than September 4, 2017.

(6) *Compliance determination*—(i) *Continuous emission monitoring system.* At all times after the compliance date specified in paragraph (l)(5) of this section, the owner/operator of each batch copper converter identified in paragraph (l)(1) of this section shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.13 and 40 CFR part 60, appendices B and F, to accurately measure the mass emission rate in pounds per hour of SO_2 emissions entering each control device used to control emissions from the converters, and venting from the converters to the atmosphere after passing through a control device or an uncontrolled bypass stack. The CEMS shall be used by the owner/operator to determine compliance with the emission limitation in paragraph (l)(4) of this section. The owner/operator must operate the monitoring system and collect data at all required intervals at all times that an affected unit is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) *Compliance determination for SO_2 limit for the converters.* The 365-day rolling SO_2 emission control efficiency for the converters shall be calculated separately for the primary capture system and the secondary capture system for each calendar day in accordance with the following procedure: Step one, sum the hourly pounds of SO_2 vented to each uncontrolled bypass stack and to each control device used to control emissions from the converters for the current calendar day and the preceding three-hundred-sixty-four (364) calendar days, to calculate the total pounds of pre-control SO_2 emissions over the most recent three-hundred-sixty-five (365) calendar day period; Step two, sum the hourly pounds of SO_2 vented to each uncontrolled bypass stack and emitted from the release point of each control device used to control emissions from the converters for the current calendar day and the preceding three-hundred-sixty-four (364) calendar days, to calculate the total pounds of post-control SO_2 emissions over the most recent three-hundred-sixty-five (365) calendar day period; Step three, divide the total amount of post-control SO_2 emissions calculated from Step two by the total amount of pre-control SO_2 emissions calculated from Step one, subtract the resulting ratio from one, and multiply the difference by 100 percent to calculate the 365-day rolling SO_2 emission control efficiency as a percentage.

(iii) *Compliance determination for nonsulfuric acid particulate matter.* Compliance with the emission limit for nonsulfuric acid particulate matter in paragraph (l)(4)(iii) of this section shall be demonstrated by the procedures in 40 CFR 63.1451(b) and 63.1453(a)(2). The owner/operator shall conduct an initial compliance test within 180 days after the compliance date specified in paragraph (l)(5) of this section unless a test performed according to the procedures in 40 CFR 63.1450 in the past year shows compliance with the limit.

(iv) *Compliance determination for particulate matter.* Compliance with the emission limit for particulate matter in paragraph (l)(4)(iv) of this section shall be demonstrated by the procedures in 40 CFR 63.1451(a) and 63.1453(a)(1). The owner/operator shall conduct an initial compliance test within 180 days after the compliance date specified in paragraph (l)(5) of this section unless a test performed according to the procedures in 40 CFR 63.1450 in the past year shows compliance with the limit.

(v) *Compliance determination for NO_X.* Compliance with the emission limit for NO_X in paragraph (l)(4)(v) of this section shall be demonstrated by monitoring natural gas consumption in each of the units identified in paragraph (l)(1) of this section for each calendar day. At the end of each calendar month, the owner/operator shall calculate 12-consecutive month NO_X emissions by multiplying the daily natural gas consumption rates for each unit by an approved emission factor and adding the sums for all units over the previous 12-consecutive month period.

(7) *Alternatives to requirements to install CEMS.* The requirement in paragraph (l)(6)(i) of this section to install CEMS to measure the mass of SO_2 entering a control device or venting to the atmosphere through uncontrolled bypass stacks will be waived if the owner/operator complies with one of the options in this paragraph (l)(7).

(i) *Acid plants.* The owner/operator may calculate the pounds of SO_2 entering an acid plant during a calendar day by adding the pounds of SO_2 emitted through the acid plant tail stack and 0.653 times the daily production of anhydrous sulfuric acid from the acid plant.

(ii) *Uncontrolled bypass stack.* The owner/operator may calculate the pounds of SO_2 venting to the atmosphere through an uncontrolled bypass stack based on test data provided the facility operates according to a startup, shutdown, and malfunction plan consistent with 40 CFR 63.6(e)(3) and the Regional Administrator has approved a calculation methodology for planned and unplanned bypass events.

(8) *Capture system monitoring.* For each operating limit established under the capture system operation and maintenance plan required by paragraph (l)(4) of this section, the owner/operator must install, operate, and maintain an appropriate monitoring device according to the requirements in 40 CFR 63.1452(a)(1) through (6) to measure and record the operating limit value or setting at all times the required capture system is operating. Dampers that are manually set and remain in the same position at all times the capture system is operating are exempted from these monitoring requirements.

(9) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix F, Procedure 1.

(iii) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(iv) Any other records required by 40 CFR part 60, subpart F, or 40 CFR part 60, appendix F, Procedure 1.

(v) Records of all monitoring required by paragraph (l)(8) of this section.

(vi) Records of daily sulfuric acid production in tons per day of pure,

anhydrous sulfuric acid if the owner/operator chooses to use the alternative compliance determination method in paragraph (l)(7)(i) of this section.

(vii) Records of planned and unplanned bypass events and calculations used to determine emissions from bypass events if the owner/operator chooses to use the alternative compliance determination method in paragraph (l)(7)(ii) of this section.

(viii) Records of daily natural gas consumption in each units identified in paragraph (l)(1) of this section and all calculations performed to demonstrate compliance with the limit in paragraph (l)(4)(vi) of this section.

(10) *Reporting.* All reports required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mail Code ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. All reports required under this section shall be submitted within 30 days after the applicable compliance date in paragraph (l)(5) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) The owner/operator shall promptly submit excess emissions reports for the SO_2 limit. Excess emissions means emissions that exceed the emissions limit specified in paragraph (d) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted. For the purpose of this paragraph (l)(10)(i), promptly shall mean within 30 days after the end of the month in which the excess emissions were discovered.

(ii) The owner/operator shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments. The owner/operator shall submit reports semiannually.

(iii) The owner/operator shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(iv) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the semiannual report.

(v) When performance testing is required to determine compliance with an emission limit in paragraph (l)(4) of this section, the owner/operator shall submit test reports as specified in 40 CFR part 63, subpart A.

(11) *Notifications.* (i) The owner/operator shall notify EPA of commencement of construction of any equipment which is being constructed to comply with the capture or emission limits in paragraph (l)(3) or (4) of this section.

(ii) The owner/operator shall submit semiannual progress reports on construction of any such equipment.

(iii) The owner/operator shall submit notification of initial startup of any such equipment.

(12) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(13) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(m) *Source-specific federal implementation plan for regional haze at Miami Copper Smelter*—(1) *Applicability.* This paragraph (m) applies to each owner/operator of batch copper converters 2, 3, 4 and 5 and the electric furnace at the copper smelting plant located in Miami, Gila County, Arizona.

(2) *Definitions.* Terms not defined in this paragraph (m)(2) shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this paragraph (m):

Batch copper converter means a Hoboken converter in which copper matte is oxidized to form blister copper by a process that is performed in discrete batches using a sequence of charging, blowing, skimming, and pouring.

Calendar day means a 24 hour period that begins and ends at midnight, local standard time.

Capture system means the collection of components used to capture gases and fumes released from one or more emission points, and to convey the captured gases and fumes to one or more control devices. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Continuous emission monitoring system or CEMS means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2 emissions, other pollutant emissions, diluent, or stack gas volumetric flow rate.

Copper matte means a material predominately composed of copper and iron sulfides produced by smelting copper ore concentrates.

Electric furnace means a furnace in which copper matte and slag are heated by electrical resistance without the mechanical introduction of air or oxygen.

NO_X means nitrogen oxides.

Owner/operator means any person who owns or who operates, controls, or supervises the equipment identified in paragraph (m)(1) of this section.

Slag means the waste material consisting primarily of iron sulfides separated from copper matte during the smelting and refining of copper ore concentrates.

SO_2 means sulfur dioxide.

(3) *Emission capture.* (i) The owner/operator of the batch copper converters

identified in paragraph (m)(1) of this section must operate a capture system that has been designed to maximize collection of process off gases vented from each converter. The capture system must include a primary capture system as described in 40 CFR 63.1444(d)(3) and a secondary capture system designed to maximize the collection of emissions not collected by the primary capture system.

(ii) The operation of the batch copper converters, primary capture system, and secondary capture system shall be optimized to capture the maximum amount of process off gases vented from each converter at all times.

(iii) The owner/operator shall prepare a written operation and maintenance plan according to the requirements in paragraph (m)(3)(iv) of this section and submit this plan to the Regional Administrator 180 days prior to the compliance date in paragraph (m)(5) of this section. The Regional Administrator shall approve or disapprove the plan within 180 days of submittal. At all times when one or more converters are blowing, the owner/operator must operate the capture system consistent with this plan.

(iv) The written operations and maintenance plan must address the following requirements as applicable to the capture system or control device.

(A) *Preventative maintenance.* The owner/operator must perform preventative maintenance for each capture system and control device according to written procedures specified in owner/operator's operation and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions for routine and long-term maintenance.

(B) *Capture system inspections.* The owner/operator must perform capture system inspections for each capture system in accordance with the requirements of 40 CFR 63.1447(b)(2).

(C) *Copper converter department capture system operating limits.* The owner/operator must establish, according to the requirements 40 CFR 63.1447(b)(3)(i) through (iii), operating limits for the capture system that are representative and reliable indicators of the performance of capture system when it is used to collect the process off-gas vented from batch copper converters during blowing.

(4) *Emission limitations and work practice standards.* (i) SO_2 emissions collected by the capture system required by paragraph (m)(3) of this section must be controlled by one or more control devices and reduced by at least 99.7 percent, based on a 365-day rolling average.

(ii) The owner/operator must not cause or allow to be discharged to the atmosphere from any primary capture system required by paragraph (m)(3) of this section off-gas that contains nonsulfuric acid particulate matter in excess of 6.2 mg/dscm as measured using the test methods specified in 40 CFR 63.1450(b).

(iii) Total NO_X emissions the electric furnace and the batch copper converters shall not exceed 40 tons per 12-continuous month period.

(iv) The owner/operator shall not actively aerate the electric furnace.

(5) *Compliance dates.* (i) The owner/operator of each batch copper converter identified in paragraph (m)(1) of this section shall comply with the emission capture requirement in paragraph (m)(3) of this section; the emission limitation in paragraph (m)(4)(i) of this section; the compliance determination requirements in paragraphs (m)(6)(i) and (ii) and (m)(7) of this section; the capture system monitoring requirements in paragraph (m)(8) of this section; the recordkeeping requirements in paragraphs (m)(9)(i) through (viii) of this section; and the reporting requirements in paragraphs (m)(10)(i) through (iv) of this section no later than January 1, 2018.

(ii) The owner/operator of each batch copper converter and the electric furnace identified in paragraph (m)(1) of this section shall comply with all requirements of this paragraph (m) except those listed in paragraph (m)(5)(i) of this section no later than September 2, 2016.

(6) *Compliance determination*—(i) *Continuous emission monitoring system.* At all times after the compliance date specified in paragraph (m)(5) of this section, the owner/operator of each batch copper converter identified in paragraph (m)(1) of this section shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR 60.13 and 40 CFR part 60, appendices B and F, to accurately measure the mass emission rate in pounds per hour of SO_2 emissions entering each control device used to control emissions from the converters, and venting from the converters to the atmosphere after passing through a control device or an uncontrolled bypass stack. The CEMS shall be used by the owner/operator to determine compliance with the emission limitation in paragraph (m)(4)(i) of this section. The owner/operator must operate the monitoring system and collect data at all required intervals at all times that an affected unit is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) *Compliance determination for SO_2.* The 365-day rolling SO_2 emission control efficiency for the converters shall be calculated for each calendar day in accordance with the following procedure: Step one, sum the hourly pounds of SO_2 vented to each uncontrolled bypass stack and to each control device used to control emissions from the converters for the current calendar day and the preceding three-hundred-sixty-four (364) calendar days, to calculate the total pounds of pre-control SO_2 emissions over the most recent three-hundred-sixty-five (365) calendar day period; Step two, sum the hourly pounds of SO_2 vented to each uncontrolled bypass stack and emitted from the release point of each control device used to control emissions from the converters for the current calendar day and the preceding three-hundred-sixty-four (364) calendar days, to calculate the total pounds of post-control SO_2 emissions over the most recent three-hundred-sixty-five (365) calendar day period; Step three, divide the total amount of post-control SO_2 emissions calculated from Step two by the total amount of pre-control SO_2 emissions calculated from Step one, subtract the resulting ratio from one, and multiply the difference by 100 percent to calculate the 365-day rolling SO_2 emission control efficiency as a percentage.

(iii) *Compliance determination for nonsulfuric acid particulate matter.* Compliance with the emission limit for nonsulfuric acid particulate matter in paragraph (m)(4)(ii) of this section shall be demonstrated by the procedures in 40 CFR 63.1451(b) and 63.1453(a)(2). The owner/operator shall conduct an initial compliance test within 180 days after the compliance date specified in paragraph (m)(5) of this section unless a test performed according to the procedures in 40 CFR 63.1450 in the past year shows compliance with the limit.

(iv) *Compliance determination for NO_X.* Compliance with the emission limit for NO_X in paragraph (m)(4)(iii) of this section shall be demonstrated by monitoring natural gas consumption in each of the units identified in paragraph (m)(1) of this section for each calendar day. At the end of each calendar month, the owner/operator shall calculate monthly and 12-consecutive month NO_X emissions by multiplying the daily

natural gas consumption rates for each unit by an approved emission factor and adding the sums for all units over the previous 12-consecutive month period.

(7) *Alternatives to requirements to install CEMS.* The requirement in paragraph (m)(6)(i) of this section to install CEMS to measure the mass of SO_2 entering a control device or venting to the atmosphere through uncontrolled bypass stacks will be waived if the owner/operator complies with one of the options in this paragraph (m)(7).

(i) *Acid plants.* The owner/operator may calculate the pounds of SO_2 entering an acid plant during a calendar day by adding the pounds of SO_2 emitted through the acid plant tail stack and 0.653 times the daily production of anhydrous sulfuric acid from the acid plant.

(ii) *Alkali scrubber.* The owner/operator may calculate the pounds of SO_2 entering an alkali scrubber during a calendar day by using the following equation:

$$M_{in,SO2} = M_{out,SO2} + SF*M_{alk}$$

Where:

$M_{in,SO2}$ is the calculated mass of SO_2 entering the scrubber during a calendar day;
$M_{out,SO2}$ is the mass of SO_2 emitted through the scrubber stack measured by the CEMS for the calendar day;
SF is a stoichiometric factor; and
M_{alk} is the mass of alkali added to the scrubber liquor during the calendar day.

SF shall equal:

1.14 if the alkali species is calcium oxide (CaO);
1.59 if the alkali species is magnesium oxide (MgO);
0.801 if the alkali species is sodium hydroxide (NaOH); or
Another value if the owner/operator has received approval from the Regional Administrator in advance.

(iii) *Uncontrolled bypass stack.* The owner/operator may calculate the pounds of SO_2 venting to the atmosphere through an uncontrolled bypass stack based on test data provided the facility operates according to a startup, shutdown, and malfunction plan consistent with 40 CFR 63.6(e)(3) and EPA has approved a calculation methodology for planned and unplanned bypass events.

(8) *Capture system monitoring.* For each operating limit established under the capture system operation and maintenance plan required by paragraph (m)(3) of this section, the owner/operator must install, operate, and maintain an appropriate monitoring device according to the requirements in 40 CFR 63.1452(a)(1) though (6) to measure and record the operating limit value or setting at all times the required capture system is operating. Dampers that are manually set and remain in the same position at all times the capture system is operating are exempted from these monitoring requirements.

(9) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix F, Procedure 1.

(iii) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(iv) Any other records required by 40 CFR part 60, subpart F, or 40 CFR part 60, appendix F, Procedure 1.

(v) Records of all monitoring required by paragraph (m)(8) of this section.

(vi) Records of daily sulfuric acid production in tons per day of pure, anhydrous sulfuric acid if the owner/operator chooses to use the alternative compliance determination method in paragraph (m)(7)(i) of this section.

(vii) Records of daily alkali consumption in tons per day of pure, anhydrous alkali if the owner/operator chooses to use the alternative compliance determination method in paragraph (m)(7)(ii) of this section.

(viii) Records of planned and unplanned bypass events and calculations used to determine emissions from bypass events if the owner/operator chooses to use the alternative compliance determination method in paragraph (m)(7)(iii) of this section.

(ix) Records of daily natural gas consumption in each units identified in paragraph (m)(1) of this section and all calculations performed to demonstrate compliance with the limit in paragraph (m)(4)(iv) of this section.

(10) *Reporting.* All reports required under this section shall be submitted by the owner/operator to the Director, Enforcement Division (Mail Code ENF–2–1), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. All reports required under this section shall be submitted within 30 days after the applicable compliance date in paragraph (m)(5) of this section and at least semiannually thereafter, within 30 days after the end of a semiannual period. The owner/operator may submit reports more frequently than semiannually for the purposes of synchronizing reports required under this section with other reporting requirements, such as the title V monitoring report required by 40 CFR 70.6(a)(3)(iii)(A), but at no point shall the duration of a semiannual period exceed six months.

(i) The owner/operator shall promptly submit excess emissions reports for the SO_2 limit. Excess emissions means emissions that exceed the emissions limit specified in paragraph (d) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted. For the purpose of this paragraph (m)(10)(i), promptly shall mean within 30 days after the end of the month in which the excess emissions were discovered.

(ii) The owner/operator shall submit CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments. The owner/operator shall submit reports semiannually.

(iii) The owner/operator shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(iv) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, the owner/operator shall state such information in the semiannual report.

(v) When performance testing is required to determine compliance with an emission limit in paragraph (m)(4) of this section, the owner/operator shall submit test reports as specified in 40 CFR part 63, subpart A.

(11) *Notifications.*

(i) The owner/operator shall notify EPA of commencement of construction of any equipment which is being constructed to comply with the capture or emission limits in paragraph (m)(3) or (4) of this section.

(ii) The owner/operator shall submit semiannual progress reports on construction of any such equipment.

(iii) The owner/operator shall submit notification of initial startup of any such equipment.

(12) *Equipment operations.* At all times, including periods of startup,

shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(13) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

Appendix A to § 52.145—Cement Kiln Control Technology Demonstration Requirements

I. Scope

1. The owner/operator shall comply with the requirements contained in this appendix for implementing combustion and process optimization measures and in proposing and establishing rolling 30-kiln operating day limits for nitrogen oxide (NO_X).

2. The owner/operator shall take the following steps to establish rolling 30-kiln operating day limits for NO_X.

a. Design Report: At least 6 months prior to commencing construction of an ammonia injection system, the owner/operator shall prepare and submit to EPA for review a Design Report for the ammonia injection system.

b. Baseline Data Collection: Prior to initiating operation of an ammonia injection system, the owner/operator shall either: (i) Collect new baseline emissions and operational data for a 180-day period; or (ii) submit for EPA review baseline emissions and operational data from a period prior to the date of any baseline data collection period. Such baseline emissions and operational data shall be representative of the full range of normal kiln operations, including regular operating changes in raw mix chemistry due to different clinker manufacture, changes in production levels, and operation of the oxygen plants.

c. Optimization Protocol: Prior to commencement of the Optimization Period, the owner/operator shall submit for EPA review an Optimization Protocol which shall include the procedures to be used for the purpose of adjusting operating parameters and minimizing emissions.

d. Optimization Period: Following completion of installation of an ammonia injection system, the owner/operator shall undertake a startup and optimization period for the ammonia injection system.

e. Optimization Report: Within 60 calendar days following the conclusion of the Optimization Program, the owner/operator shall submit to EPA an Optimization Report demonstrating conformance with the Optimization Protocol, and establishing optimized operating parameters for the ammonia injection system as well as other facility processes.

f. Demonstration Period: Upon completion of the optimization period specified above, the owner/operator shall operate the ammonia injection system in a manner consistent with the optimization period for a period of 270 kiln operating days (subject to being shortened or lengthened as provided for in Items 17 and 18 of this appendix) for the purpose of establishing a rolling 30-kiln operating day limit.

g. Demonstration Report: The owner/operator shall prepare and submit to EPA for review, a report following completion of the demonstration period for the ammonia injection system.

II. Design Report

3. Prior to commencing construction of the ammonia injection system, the owner/operator shall submit to EPA for review a Design Report for the ammonia injection system. The owner/operator shall design the ammonia injection system to deliver the proposed reagent to the exhaust gases at the rate of at least 1.2 mols of reagent to 1.0 mols of NO_X (1.2:1 molar ratio). The system shall be designed to inject Ammonia into the kiln exhaust gas stream. The owner/operator shall specify in the Design Report the reagent(s) selected, the locations selected for reagent injection, and other design parameters based on maximum emission reduction effectiveness, good engineering judgment, vendor standards, available data, kiln operability, and regulatory restrictions on reagent storage and use.

4. Any permit application which may be required under state or federal law for the ammonia injection system shall be consistent with the Design Report.

III. Baseline Data Collection

5. Prior to commencement of continuous operation of the ammonia injection system, the owner/operator shall either: (a) Collect new baseline emissions and operational data for a 180-day period; or (b) submit for EPA review existing baseline emissions and operational data collected from a period of time prior to the initiation of a baseline collection period. Such baseline emissions and operational data shall include the data required by Item 8 below for periods of time representing the full range of normal kiln operations including changes in raw mix chemistry due to differing clinker manufacture, changes in production levels and operation of the oxygen plants. Within 45 Days following the completion of the baseline data collection period, the owner/operator shall submit to EPA the baseline data collected during the Baseline Data Collection Period.

IV. Optimization Period

6. The owner/operator shall install, operate, and collect NO_X emissions data from a CEMS in accordance with § 52.145(k)(7)(i), reagent injection data in accordance with § 52.145(k)(7)(ii)(D), and other operational data prior to commencement of the Optimization Period.

7. During the Baseline Data Collection Period (if the owner/operator elects to collect new data) and the Optimization Period, the owner/operator shall operate the Kiln in a manner necessary to produce a quality cement clinker product. The owner/operator shall not be expected to operate the Kiln within normal operating parameters during periods of Kiln Malfunction, Startup and Shutdown. The owner/operator shall not intentionally adjust kiln operating parameters to increase the rate of emission (expressed as lb/ton of clinker produced) for NO_X. Increases or variability in the Kiln feed sulfur content, fuel and other raw materials composition including imported raw materials, resulting from the inherent variability within the onsite quarries and imported materials shall not constitute an intentional increase in emission rate.

8. The data to be collected during the Baseline Data Collection Period (if the owner/operator elects to collect baseline data) and the Optimization Period will include the following information either derived from available direct monitoring or as estimated from monitored or measured data:

a. Kiln flue gas temperature at the inlet to the fabric filter or at the Kiln stack (daily average);

b. Kiln production rate in tons of clinker (daily total) by type;

c. Raw material feed rate in tons (daily total) by type;

d. Type and percentage of each raw material used and the total feed rate (daily);

e. NO_X and CO concentrations (dry basis) and mass rates for the Kiln (daily average for concentrations and daily totals for mass rates) as measured at the Kiln stack gas analyzer location;

f. Flue gas volumetric flow rate (daily average in dry acfm);

g. Sulfate in feed (calculated to a daily average percentage);

h. Feed burnability (C3S) (at least daily). In the event that more than one type of clinker is produced, the feed burnability for each clinker type will be included;

i. Temperatures in or near the burning zone (by infrared or optical pyrometer);

j. Kiln system fuel feed rate and type of fuel by weight or heat input rate (calculated to a daily average);

k. Fuel distribution, an estimate of how much is injected at each location (daily average);

l. Kiln amps (daily average);

m. Kiln system draft fan settings and primary air blower flow rates;

n. Documentation of any Startup, Shutdown, or Malfunction events;

o. An explanation of any gaps in the data or missing data; and

p. Amount of oxygen generated and introduced into the Kiln (lb/day).

9. The owner/operator shall submit the data to EPA in an electronic format and shall explain the reasons for any data not collected for each of the parameters. The owner/operator shall report all data in a format consistent with and able to be manipulated by Microsoft Excel.

10. Prior to commencement of the Optimization Period, the owner/operator shall submit to EPA for review a protocol (''Optimization Protocol'') for optimizing the ammonia injection system, including optimization of the operational parameters resulting in the minimization of emissions of NO_X to the greatest extent practicable without violating any limits. The Protocol shall describe procedures to be used during the Optimization Period to optimize the facility processes to minimize emissions from the kiln and adjust ammonia injection system operating parameters, and shall include the following:

a. The following measures to optimize the facility's processes to reduce NOx emissions in conjunction with the ammonia injection system:

i. Adjustment of the balance between fuel supplied to the existing riser duct burner and the existing calciner burners to improve overall combustion within the calciner while maintaining product quality;

ii. Adjustments to the calciner combustion to ensure complete fuel burning, which will help to both reduce CO and improve NOx levels by, at a minimum:

1. Adjusting fuel fineness to improve the degree of combustion completed in the calciner; and

2. Adjusting the proportions of primary, secondary and tertiary air supplied to the kiln system while maintaining product quality; and

iii. Adjustments to the raw mix chemical and physical properties using onsite raw materials to improve kiln stability and maintain product quality, including but not limited to, fineness of the raw mix. As part of this optimization measure, the owner/operator shall take additional measurements using existing monitoring equipment at relevant process locations to evaluate the impact of raw mix refinements.

b. The range of reagent injection rates (as a molar ratio of the average pollutant concentration);

c. Sampling and testing programs that will be undertaken during the initial reagent injection rate period;

d. A plan to increase the reagent injection rate to identify the injection rates with the maximum emission reduction effectiveness and associated sampling and testing programs for each increase in the reagent rate. The owner/operator shall test, at a minimum, for the ammonia injection system at molar ratios of 0.75, 1.0, and 1.20. If data collected at the highest molar ratio indicates decreasing lb/ton emissions, the owner/operator shall continue to test the ammonia injection system by increasing the molar ratio by increments of 0.10 until either the lb/ton emission data indicates no significant decrease from the previous increment, or adverse effects are observed (e.g., ammonia slip emissions above 10 ppm, presence of a secondary particulate plume, impaired product, impaired kiln operations).

e. The factors that will determine the optimum reagent injection rates and pollutant emission reductions (including maintenance of Kiln, productivity, and product quality); and

f. Evaluation of any observed synergistic effects on Kiln emissions, Kiln operation, reagent slippage, or product quality from the ammonia injection system.

11. As part of the Optimization Protocol, the owner/operator shall submit to EPA a schedule for optimizing each the ammonia injection system parameters identified in Item 10 of this appendix. The schedule shall indicate the total duration of the Optimization period, and must optimize each identified parameter for the following minimum amounts of time:

Parameter	Minimum optimization period (operating days)
Fuel usage between riser duct burner and calciner burners	15
Calciner combustion	45
Raw mix chemical and physical properties stabilization	45
Setup of SNCR, initial operation of reagent injection, and calibration	60

12. Within 60 days following the termination of the Optimization Period(s), the owner/operator shall submit to EPA for review an Optimization Report demonstrating conformance with the Optimization Protocol for the ammonia injection system and establishing the optimized operating parameters for the facility processes and the ammonia injection system determined under the Optimization Protocol, including optimized injection rates for all reagents. The owner/operator may take into account energy, environmental, and economic impacts and other costs in proposing the optimized state of the ammonia injection system, including the injection rates of reagents, and the operating parameters for the facility processes. The owner/operator may also include in the Optimization Report a discussion of any problems encountered during the Optimization Period, and how that problem may impact the potential emission reductions (e.g. the quantity of reagent slip at varying injection rates and/or the possible observance of a detached plume above the Stack).

13. Optimization Targets: Except as otherwise provided in this Item and in Item 14 of this appendix, the ammonia injection system shall be deemed to be optimized if the Optimization Report demonstrates that the ammonia injection system during periods of normal operation has achieved emission reductions consistent with its maximum design stoichiometric rate identified in the Design Report.

14. Notwithstanding the provisions of Item 13 of this appendix, the ammonia injection system may be deemed to be optimized at a lower rate of emission reductions than that identified in Item 13 of this appendix if the Optimization Report demonstrates that, during periods of normal operation, a lower rate of emission reductions cannot be sustained after all parameters and injection rates are optimized during the Optimization Period without creating a meaningful risk of impairing product quality, impairing Kiln system reliability, impairing compliance with a maximum ammonia slip emissions limit of 10 ppm or other permitted levels, or forming a detached plume.

15. During the Optimization Period, the owner/operator, to the extent practicable and applicable, shall operate the ammonia injection system in a manner consistent with good air pollution control practice consistent with 40 CFR 60.11(d). The owner/operator will adjust its optimization of the ammonia injection system as may be necessary to avoid, mitigate or abate an identifiable non-compliance with an emission limitation or standard for pollutants other than NOx. In the event the owner/operator determines, prior to the expiration of the Optimization Period, that its ability to optimize the ammonia injection system will be affected by potential impairments to product quality, kiln system reliability or increased emissions of other pollutants, then the owner/operator shall promptly advise EPA of this determination, and include these considerations as part of its recommendation in its Optimization Report.

V. Demonstration Period

16. The Demonstration Period shall commence within 7 days after the owner/operator's receipt of final comments from EPA on the Optimization Report. During the Demonstration Period, the owner/operator shall operate the ammonia injection system for a period of 270 Operating Days consistent with the optimized operations of the Facility and the ammonia injection system as contained in the Optimization Report. This 270 Operating Day Demonstration Period may be shortened or lengthened as provided for in Items 17 and 18 of this appendix.

17. If Kiln Operation is disrupted by excessive unplanned outages, or excessive Startups and Shutdowns during the Demonstration Period, or if the Kiln temporarily ceases operation for business or technical reasons, the owner/operator may advise EPA that it is necessary to temporarily extend the Demonstration Period. Data gathered during periods of disruption may not be used to determine an emission limitation.

18. If evidence arises during the Demonstration Period that product quality, kiln system reliability, or emission compliance with an emission limitation or standard is impaired by reason of longer term operation of the ammonia injection system in a manner consistent with the parameters identified in the Optimization Report, then the owner/operator may, upon notice to EPA, temporarily modify the manner of operation of the facility process or the ammonia injection system to mitigate the effects and, if necessary, notify EPA that the owner/operator will suspend or extend the

Demonstration Period for further technical evaluation of the effects of a process optimization or permanently modify the manner of operation of the ammonia injection system to mitigate the effects.

19. During the Demonstration Period, the owner/operator shall collect the same data as required in Item 8 of this appendix. The Demonstration Report shall include the data collected as required in this Item.

20. Within 60 Days following completion of the Demonstration Period for the ammonia injection system, the owner/operator shall submit a Demonstration Report to EPA, based upon and including all of the data collected during the Demonstration Period including data from Startup, Shutdown and Malfunction events, that identifies a proposed 30-kiln operating day emission limit for NO_X. The 30-kiln operating day emission limit for NO_X shall be based upon an analysis of CEMS data and clinker production data collected during the Demonstration Period, while the process and ammonia injection system parameters were optimized in determining the proposed final Emission Limit(s) achievable for the Facility. Total pounds of an affected pollutant emitted during an individual Operating Day will be calculated from collected CEMS data for that Day. Hours or Days when there is no Kiln Operation may be excluded from the analyses. However, the owner/operator shall provide an explanation in the Demonstration Report(s) for any data excluded from the analyses. In any event, the owner/operator shall include all data required to be collected during the Demonstration Period in the Final Demonstration Report(s).

21. The owner/operator shall propose a 30-kiln operating day emission limit for NOx in the Demonstration Report(s) as provided in Item 20 of this appendix. This 30-kiln operating day emission limit shall be calculated in accordance with the following formula:

$X = \mu + 1.65\sigma$

Where:

X = 30-Day Rolling Average Emission Limit (lb/Ton of clinker);

μ = arithmetic mean of all of the 30-Day rolling averages;

σ = standard deviation of all of the 30-Day rolling averages, as calculated in the following manner:

$$\sigma = \sqrt{\frac{1}{N}\sum_{i=1}^{N}(x_i - \bar{x})^2}$$

Where:

N = The total number of rolling 30-kiln operating day emission rates;

x_i = Each rolling 30-kiln operating day emission rate;

$\bar{x}$ = The mean value of all of the rolling 30-kiln operating day emission rates.

22. Supporting data required to be submitted under this appendix may contain information relative to kiln operation and production that the owner/operator may consider to be proprietary. In such a situation, the owner/operator may submit the information to EPA as CBI, subject to the provisions of 40 CFR part 2.

Appendix B to § 52.145—Lime Kiln Control Technology Demonstration Requirements

I. Scope

1. The owner/operator shall comply with the requirements contained in this appendix for implementing combustion and process optimization measures and in proposing and establishing rolling 12-month limits for nitrogen oxide (NO_X).

2. The owner/operator shall take the following steps to establish rolling 12-month limits for NOx.

a. Design Report: At least 6 months prior to commencing construction of an ammonia injection system, the owner/operator shall prepare and submit to EPA for review a Design Report for the ammonia injection system;

b. Baseline Data Collection: Prior to initiating operation of an ammonia injection system, the owner/operator shall either: (i) Collect new baseline emissions and operational data for a 180-day period; or (ii) submit for EPA review baseline emissions and operational data from a period prior to the date of any baseline data collection period. Such baseline emissions and operational data shall be representative of the full range of normal kiln operations.

c. Optimization Protocol: Prior to commencement of the Optimization Period, the owner/operator shall submit for EPA review an Optimization Protocol which shall include the procedures to be used for the purpose of adjusting operating parameters and minimizing emissions.

d. Optimization Period: Following completion of installation of an ammonia injection system, the owner/operator shall undertake a startup and optimization period for the ammonia injection system;

e. Optimization Report: Within 60 calendar days following the conclusion of the Optimization Program, the owner/operator shall submit to EPA an Optimization Report demonstrating conformance with the Optimization Protocol, and establishing optimized operating parameters for the ammonia injection system as well as other facility processes.

f. Demonstration Period: Upon completion of the optimization period specified above, the owner/operator shall operate the ammonia injection system in a manner consistent with the optimization period for a period of 360 kiln operating days (subject to being shortened or lengthened as provided for in Items 17 and 18 of this appendix) for the purpose of establishing a rolling 30-kiln operating day limit; and

g. Demonstration Report: The owner/operator shall prepare and submit to EPA for review, a report following completion of the demonstration period for the ammonia injection system.

II. Design Report

3. Prior to commencing construction of the ammonia injection system, the owner/operator shall submit to EPA for review a Design Report for the ammonia injection system. The owner/operator shall design the ammonia injection system to deliver the proposed reagent to the exhaust gases at the rate of at least 1.2 mols of reagent to 1.0 mols of NOx (1.2:1 molar ratio). The system shall be designed to inject Ammonia into the kiln exhaust gas stream. The owner/operator shall specify in the Design Report the reagent(s) selected, the locations selected for reagent injection, and other design parameters based on maximum emission reduction effectiveness, good engineering judgment, vendor standards, available data, kiln operability, and regulatory restrictions on reagent storage and use.

4. Any permit application which may be required under state or federal law for the ammonia injection system shall be consistent with the Design Report.

III. Baseline Data Collection

5. Prior to commencement of continuous operation of the ammonia injection system, the owner/operator shall either: (a) Collect new baseline emissions and operational data for a 180-day period; or (b) submit for EPA review existing baseline emissions and operational data collected from a period of time prior to the initiation of a baseline collection period. Such baseline emissions and operational data shall include the data required by Item 8 of this appendix for periods of time representing the full range of normal kiln operations. Within 45 Days following the completion of the baseline data collection period, the owner/operator shall submit to EPA the baseline data collected during the Baseline Data Collection Period.

IV. Optimization Period

6. The owner/operator shall install, operate, and collect NO_X emissions data from a CEMS in accordance with § 52.145(k)(7)(i), reagent injection data in accordance with § 52.145(k)(7)(ii)(D), and other operational data prior to commencement of the Optimization Period.

7. During the Baseline Data Collection Period (if the owner/operator elects to collect new data) and the Optimization Period, the owner/operator shall operate the Kiln in a manner necessary to produce a quality lime product. The owner/operator shall not be expected to operate the Kiln within normal operating parameters during periods of Kiln Malfunction, Startup and Shutdown. The owner/operator shall not intentionally adjust kiln operating parameters to increase the rate of emission (expressed as lb/ton of lime product produced) for NO_X.

8. The data to be collected during the Baseline Data Collection Period (if the owner/operator elects to collect baseline data) and the Optimization Period will include the following information either derived from available direct monitoring or as estimated from monitored or measured data:

a. Kiln flue gas temperature at the inlet to the fabric filter or at the Kiln stack (daily average);

b. Kiln production rate in tons of lime product (daily total) by type;

c. NO_X and CO concentrations (dry basis) and mass rates for the Kiln (daily average for concentrations and daily totals for mass rates) as measured at the Kiln stack gas analyzer location;

d. Flue gas volumetric flow rate (daily average in dry acfm);

e. Sulfate in feed (calculated to a daily average percentage);

f. Feed burnability (C3S) (at least daily). In the event that more than one type of lime product is produced, the feed burnability for each type of lime product will be included;

g. Temperatures in or near the burning zone (by infrared or optical pyrometer);

h. Kiln system fuel feed rate and type of fuel by weight or heat input rate (calculated to a daily average);

i. Fuel distribution, an estimate of how much is injected at each location (daily average);

j. Kiln amps (daily average);

k. Kiln system draft fan settings and primary air blower flow rates;

l. Documentation of any Startup, Shutdown, or Malfunction events;

m. An explanation of any gaps in the data or missing data; and

n. Amount of oxygen generated and introduced into the Kiln (lb/day).

9. The owner/operator shall submit the data to EPA in an electronic format and shall explain the reasons for any data not collected for each of the parameters. The owner/operator shall report all data in a format consistent with and able to be manipulated by Microsoft Excel.

10. Prior to commencement of the Optimization Period, the owner/operator shall submit to EPA for review a protocol (''Optimization Protocol'') for optimizing the ammonia injection system, including optimization of the operational parameters resulting in the minimization of emissions of NO_X to the greatest extent practicable without violating any limits. The Protocol shall describe procedures to be used during the Optimization Period to optimize the facility processes to minimize emissions from the kiln and adjust ammonia injection system operating parameters, and shall include the following:

a. The range of reagent injection rates (as a molar ratio of the average pollutant concentration);

b. Sampling and testing programs that will be undertaken during the initial reagent injection rate period;

c. A plan to increase the reagent injection rate to identify the injection rates with the maximum emission reduction effectiveness and associated sampling and testing programs for each increase in the reagent rate. The owner/operator shall test, at a minimum, for the ammonia injection system at three molar ratios of 0.75, 1.0, and 1.20;

d. The factors that will determine the optimum reagent injection rates and pollutant emission reductions (including maintenance of Kiln, productivity, and product quality); and

e. Evaluation of any observed synergistic effects on Kiln emissions, Kiln operation, reagent slippage, or product quality from the ammonia injection system.

f. Any additional facility processes that the owner/operator determines may reduce NO_X emissions in conjunction with the ammonia injection system.

11. As part of the Optimization Protocol, the owner/operator shall submit to EPA a schedule for optimizing each of the ammonia injection system parameters identified in Item 10 of this appendix. The schedule shall indicate the total duration of the Optimization period, and must optimize each identified parameter for the following minimum amounts of time:

Parameter	Minimum optimization period (operating days)
Setup of SNCR, initial operation of reagent injection, and calibration	60

12. Within 60 Days following the termination of the Optimization Period(s), the owner/operator shall submit to EPA for review an Optimization Report demonstrating conformance with the Optimization Protocol for the ammonia injection system and establishing the optimized operating parameters for the facility processes and the ammonia injection system determined under the Optimization Protocol, including optimized injection rates for all reagents. The owner/operator may take into account energy, environmental, and economic impacts and other costs in proposing the optimized state of the ammonia injection system, including the injection rates of reagents, and the operating parameters for the facility processes. The owner/operator may also include in the Optimization Report a discussion of any problems encountered during the Optimization Period, and how that problem may impact the potential emission reductions (e.g. the quantity of reagent slip at varying injection rates and/or the possible observance of a detached plume above the Stack).

13. Optimization Targets: Except as otherwise provided in this Item and in Item 14 of this appendix, the ammonia injection system shall be deemed to be optimized if the Optimization Report demonstrates that the ammonia injection system during periods of normal operation has achieved emission reductions consistent with its maximum design stoichiometric rate identified in the Design Report approved pursuant to Item 3 of this appendix.

14. Notwithstanding the provisions of Item 13 of this appendix, the ammonia injection system may be deemed to be optimized at a lower rate of emission reductions than that identified in Item 13 of this appendix if the Optimization Report demonstrates that, during periods of normal operation, a lower rate of emission reductions cannot be sustained after all parameters and injection rates are optimized during the Optimization Period without creating a meaningful risk of impairing product quality, impairing Kiln system reliability, impairing compliance with a maximum ammonia slip emissions limit of 10 ppm or other permitted levels, or forming a detached plume.

15. During the Optimization Period, the owner/operator, to the extent practicable and applicable, shall operate the ammonia injection system in a manner consistent with good air pollution control practice consistent with 40 CFR 60.11(d). The owner/operator will adjust its optimization of the ammonia injection system as may be necessary to avoid, mitigate or abate an identifiable non-compliance with an emission limitation or standard for pollutants other than NO_X. In the event the owner/operator determines, prior to the expiration of the Optimization Period, that its ability to optimize the ammonia injection system will be affected by potential impairments to product quality, kiln system reliability or increased emissions of other pollutants, then the owner/operator shall promptly advise EPA of this determination, and include these considerations as part of its recommendation in its Optimization Report.

V. Demonstration Period

16. The Demonstration Period shall commence within 7 days after the owner/operator's receipt of the final comments from EPA on the Optimization Report. During the Demonstration Period, the owner/operator shall operate the ammonia injection system for a period of 360 Operating Days consistent with the optimized operations of the Facility and the ammonia injection system as contained in the Optimization Report. This 360 Operating Day Demonstration Period may be shortened or lengthened as provided for in Items 17 and 18 of this appendix.

17. If Kiln Operation is disrupted by excessive unplanned outages, or excessive Startups and Shutdowns during the Demonstration Period, or if the Kiln temporarily ceases operation for business or technical reasons, the owner/operator may advise EPA that it is necessary to temporarily extend the Demonstration Period. Data gathered during periods of disruption may not be used to determine an emission limitation.

18. If evidence arises during the Demonstration Period that product quality, kiln system reliability, or emission compliance with an emission limitation or standard is impaired by reason of longer term operation of the ammonia injection system in a manner consistent with the parameters identified in the Optimization Report, then the owner/operator may, upon notice to EPA, temporarily modify the manner of operation of the facility process or the ammonia injection system to mitigate the effects and, if necessary, notify EPA that the owner/operator will suspend or extend the Demonstration Period for further technical evaluation of the effects of a process optimization or permanently modify the manner of operation of the ammonia injection system to mitigate the effects.

19. During the Demonstration Period, the owner/operator shall collect the same data as required in Item 8 of this appendix. The Demonstration Report shall include the data collected as required in this Item.

20. Within 60 Days following completion of the Demonstration Period for the ammonia injection system, the owner/operator shall submit a Demonstration Report to EPA, based upon and including all of the data collected during the Demonstration Period including data from Startup, Shutdown and Malfunction events, that identifies a proposed rolling 12-month emission limit for NO_X. The rolling 12-month emission limit for NO_X shall be based upon an analysis of

CEMS data and lime production data collected during the Demonstration Period, while the process and ammonia injection system parameters were optimized in determining the proposed Emission Limit(s) achievable for the Facility. However, the owner/operator shall provide an explanation in the Demonstration Report(s) for any data excluded from the analyses. In any event, the owner/operator shall include all data required to be collected during the Demonstration Period in the Final Demonstration Report(s).

21. The owner/operator shall propose a rolling 12-month emission limit for NO_X in the Demonstration Report(s) as provided in Item 20 of this appendix. This rolling 12-month limit shall be calculated in accordance with the following formula:

$X = \mu + 1.65\sigma$

Where:

X = Rolling 12-month Average Emission Limit (lb/Ton of lime product);

μ = arithmetic mean of all of the Rolling 12-month averages;

σ = standard deviation of all of the rolling 12-month averages, as calculated in the following manner:

$$\sigma = \sqrt{\frac{1}{N}\sum_{i=1}^{N}(x_i - \bar{x})^2}$$

Where:

N = The total number of rolling 12-month emission rates;

x_i = Each rolling 12-month emission rate;

$\bar{x}$ = The mean value of all of the rolling 12-month emission rates.

22. Supporting data required to be submitted under this Appendix may contain information relative to kiln operation and production that the owner/operator may consider to be proprietary. In such a situation, the owner/operator may submit the information to EPA as CBI, subject to the provisions of 40 CFR part 2.

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Part III

Department of Defense

32 CFR Part 286
DoD Freedom of Information Act (FOIA) Program; Proposed Rule

DEPARTMENT OF DEFENSE BILLING CODE

Office of the Secretary

32 CFR Part 286

[DoD–2007–OS–0086; 0790–AI24]

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The rule updates DoD policy and procedures that implement the Freedom of Information Act (FOIA) and incorporate the provisions of the executive order directing agencies to improve the disclosure of information. This part promotes uniformity in the DoD FOIA Program. It takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program.

DATES: Comments must be received by November 3, 2014.

FOR FURTHER INFORMATION CONTACT: James Hogan, 571–372–0463.

SUPPLEMENTARY INFORMATION: This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

Executive Summary

I. Purpose of This Regulatory Action

a. This rule revises 32 CFR part 286 in accordance with the authority in 32 CFR part 285 to implement 5 U.S.C. 552 and incorporate the provisions of Executive Order 13392. This part promotes uniformity in the DoD FOIA Program.

b. Authority: The Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Furthermore, the FOIA requires agency to promulgate regulations to carry out some of its provisions.

II. Summary of the Major Provisions of This Regulatory Action

This rule implements changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, and the OPEN Government Act of 2007, Public Law 110–175.

III. Costs and Benefits of This Regulatory Action

This regulatory action imposes no monetary costs to the Agency or public. The benefit to the public is the accurate reflection of the Agency's FOIA Program to ensure that policies and procedures are known to the public.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

We have consulted with the Office of Management and Budget (OMB) and determined this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by *Executive Order 13563,* and was subject to OMB review.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires 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. This document will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 286 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule implements the procedures for processing FOIA requests within the Department of Defense. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This proposed rule do not create any new or affect any existing collections, and therefore, do not require OMB approval under the Paperwork Reduction Act

Executive Order 13132, ''Federalism''

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. This document will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is proposed to be revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Subpart A—General

Sec.
286.1 Purpose.
286.2 Applicability.
286.3 Definitions.
286.4 Policy.
286.5 Responsibilities.

Subpart B—General Provisions

286.6 Public access to DoD information.
286.7 FOIA requester service center.
286.8 FOIA Public Liaisons.
286.9 Unofficial release of DoD information.
286.10 Description of requested record.
286.11 Combatant Commands.
286.12 Security clearances and access.
286.13 Use of contractors in FOIA administration.
286.14 Records management.
286.15 Relationship between the FOIA and the Privacy Act.
286.16 Non-responsive information.
286.17 Honoring form or format requests.
286.18 Annual report.
286.19 Dispute resolution and the Office of Government Information Services (OGIS).

Subpart C—FOIA Libraries

286.20 Requirements.
286.21 Record availability.
286.22 Indexes.
286.23 Section (a)(1) records.

Subpart D—Exemptions

286.24 General provisions.
286.25 Applying the FOIA exemptions.
286.26 Exclusions.

Subpart E—FOIA Request Processing

286.27 General provisions.
286.28 Processing procedures.
286.29 Initial determinations.
286.30 Referrals and consultations.
286.31 Appeals.
286.32 FOIA litigation.

Subpart F—Fee Schedule

286.33 General provisions.
286.34 Fees for technical data.
286.35 Fees for research data.

Subpart G—Education and Training

286.36 Purpose.
286.37 Responsibility.
286.38 Scope and principles.
286.39 Implementation.
Appendix A to Part 286—DoD FOIA Program Components and Addresses

Authority: 5 U.S.C. 552.

Subpart A—General

§ 286.1 Purpose.

This part is in accordance with the authority in DoD Directive 5105.53, ''Director of Administration and Management (DA&M)'' (available from *http://www.dtic.mil/whs/directives/corres/pdf/510553p.pdf*) and the guidelines and responsibilities in 32 CFR part 285 to implement 5 U.S.C. 552 (also known and hereinafter referred to as ''The Freedom of Information Act (FOIA), as amended'') and incorporate the provisions of Executive Order 13392. This part promotes uniformity in the DoD FOIA Program. It takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program.

§ 286.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (referred to collectively in this part as the ''DoD Components'').

§ 286.3 Definitions.

Unless otherwise noted, these terms and their definitions are for this part.

Administrative appeal. A request by a member of the public, made pursuant to the FOIA, asking the appellate authority of a DoD Component to reverse any adverse determination by an initial denial authority (IDA).

Adverse determination. A decision by an IDA to withhold all or part of a requested record pursuant to an exemption, deny a fee category claim by a FOIA requester, deny a request for waiver or reduction of fees, deny a request to review an initial fee estimate, deny a request for expedited processing, confirm that no records were located during the initial search, or make any determination that a FOIA requester believes is adverse in nature.

Agency record. (1) Includes all documents or records created or obtained by an agency of the Government that are in an agency's possession and control at the time a FOIA request is received. Four factors determine an agency's control:

(i) The intent of the creator of the document to retain control over the record;

(ii) The ability of the agency to use and dispose of the record as it sees fit;

(iii) The extent to which agency personnel have read or relied upon the document;

(iv) The degree to which the document was integrated into the agency's record systems or files. Information maintained by an entity pursuant to government contract for a DoD Component for records management is considered in the DoD Component's possession. Records created by an agency employee during employment, including emails, may be either agency records or personal files.

(A) Examples include:

(*1*) Research data produced during the performance of a federal grant used by the Government in developing an agency action that has the force and effect of law in accordance with OMB Circular No. A–110 (available at *http://www.whitehouse.gov/omb/circulars_a110/*).

(*2*) Books, papers, maps, photographs, machine-readable materials inclusive of those in electronic form or format, and other documentary materials, regardless of physical form or characteristics. Form or format refers to physical media type or transmission mode desired by the FOIA requester, e.g., computer disk, computer tape, file transfer protocol, photographs, videotape, and microfiche.

(B) Examples do not include:

(*1*) Objects or articles such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.

(*2*) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(*3*) Personal files.

(2) The definition of an agency record under the FOIA is more expansive than the definition of a federal record. Documents such as drafts and working files need not be official records as defined as official records, but are still agency records responsive to FOIA requests.

Appellate authority. The DoD Component head, or designee, having jurisdiction to review and possibly reverse, remand, or amend any adverse determination made by an IDA. Every DoD Component listed in Appendix A to this part must have an appellate authority.

Critical Infrastructure Security Information (CISI). Defined in 10 U.S.C. 130e(c).

Commercial request. A FOIA request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the FOIA requester or the person on whose behalf the FOIA request is made.

Compelling need. A state that exists when the failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or when the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity and the value of the information would be lost if it is disseminated at a later time.

Consultation. The process whereby a federal agency transfers a FOIA responsive document to another federal agency or non-government entity, in certain situations, to obtain recommendations on the releasability of the document. After review, the document is returned to the original agency for response to the FOIA requester or further review.

Deliberative information. Internal advice, recommendations, or subjective evaluations that are reflected in records relied upon in the decision-making process of an agency, whether within or among agencies.

Demonstration of a compelling need. A statement certified to be true and correct to the best of a FOIA requester's knowledge and belief. This statement must be with the FOIA request in order for it to be considered and responded to within the 10 calendar days required for decisions on expedited access.

Direct costs. Those expenditures a DoD Component makes in searching for, reviewing, and duplicating documents to respond to a FOIA request. For example, direct costs may include the salary of the employee performing the work (the basic rate of pay plus 16 percent of that rate to cover benefits) and the costs of operating duplicating machinery. (These factors have been included in the fee rates prescribed in Table 1 of § 286.33.) Not included in direct costs are overhead expenses such as the cost of space, heating, or lighting the facility where the records are stored.

Duplication. The process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper, microfiche, audiovisual or machine-readable documentation (e.g., magnetic tape or CD), among others. Time spent programming or querying a computer system to output information in a particular digital form or format for a FOIA requester is considered search time.

Educational institution. A pre-school, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education,

or an institution of vocational education that operates a program or programs of scholarly research.

Electronic records. Records (including email) created, stored, and retrievable by electronic means.

Federal agency. Defined in 5 U.S.C. 551(1) and 552(f)(1). A federal agency cannot make a FOIA request.

Fee waiver. Defined in 5 U.S.C. 552(a)(4)(A)(iii).

Final response determination. The response from the DoD Component, at the completion of the processing of an initial FOIA request, to the FOIA requester reflecting the final release determination made by the DoD Component.

FOIA Public Liaison. A supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester receives from a FOIA Requester Center, and who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. All DoD Components listed in Appendix A to this part must have a FOIA Public Liaison.

FOIA request. A written request for DoD records that reasonably describes the record(s) sought, enabling a DoD Component employee familiar with the files to locate the record(s) with a reasonable amount of effort.

(1) A commercial requester asking for contract-related documents must indicate a willingness to pay fees equal to or greater than the minimum fees established by the DoD Component for commercial requesters.

(2) Written FOIA requests may be submitted by U.S. Postal Service or other commercial delivery means, by facsimile, or electronically, to an address provided for submission of FOIA requests and must include the FOIA requester's postal mailing address. Commercial delivery is acceptable; however, due to security concerns, the DoD Components may refuse to accept commercial delivery of FOIA requests.

FOIA requester. Any person, including a partnership, corporation, association, State or State agency, foreign government, foreign national, or a lawyer or other representative acting on behalf of any person, who submits a FOIA request. This definition specifically excludes agencies within the Executive Branch of the government.

FOIA Requester Service Center. A DoD Component office that receives FOIA requests from and responds directly to the public. It also is the first place a FOIA requester can contact to seek information concerning the status of that person's FOIA request and appropriate information about the agency's FOIA response.

Form. The storage media that hold content in digital form on which responsive information is provided to FOIA requesters. Examples are electronic documents, audiovisual material on tape, and all storage media that hold content in digital form and that are written and read by a laser; these media include all the various CD and DVD variations. Paper documents are typically an example of non-digital storage media.

Format. A pre-established layout for data. A computer program accepts data as input in a certain format, processes it, and provides it as output in the same or another format. All digital data is stored in some format with the expectation that it will be processed by a program that knows how to handle that format. Usually, data formats tend to fall into bitmaps (strings of 0s and 1s) that describe images or sound patterns (or both), text formats (where each byte value usually is mapped to a character), and numeric data formats (used by spreadsheet and other database programs). Examples include a pre-established arrangement of data for computer input or output, such as the number and size of data fields in a record or the spacing and punctuation of information in a report.

Glomar. The term applied to a type of response to a FOIA request where the DoD Component neither confirms nor denies the existence or nonexistence of records responsive to the FOIA request.

IDA. An official who has been granted authority by the DoD Component head to withhold records requested pursuant to the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. An IDA may also deny a fee category claim by a FOIA requester, deny a request for expedited processing, deny a request for a waiver or reduction of fees, review a fee estimate, and confirm that no records were located in response to a FOIA request.

Individual primarily engaged in disseminating information. A person or entity whose primary activity involves publishing or otherwise disseminating information to the public. To qualify, a person or entity must establish that information dissemination is their principal professional activity or occupation, and not an incidental or secondary activity

Military Flight Operations Quality Assurance (MFOQA) system data file. Defined in 10 U.S.C. 2254(a)(2).

Misdirected FOIA request. A FOIA request that is mistakenly addressed to a FOIA Requester Service Center of a DoD Component that is not the proper DoD Component to process the request.

News. Information that is about current events or that would be of current interest to the public.

Non-commercial scientific institution. An institution that is not operated on a commercial basis and that is operated solely for conducting scientific research, the results of which are not intended to promote any particular product or industry.

Perfected FOIA request. A request that meets the definition of a FOIA request and that arrives at the FOIA Requester Service Center of the DoD Component in possession of the records. The statutory time limit for responding to a FOIA request does not begin until it is perfected.

Personal file. Documents unrelated to the conduct of agency business, or indirectly related to agency business but outside the scope of agency records. A personal file is not subject to the FOIA. FOIA case law predominantly refers to personal files as personal records. Examples include:

(1) Business or professional files created before entering government service; files created during or relating to previously held positions, political materials, and reference files.

(2) Private files brought into, created, or received in the office; family and personal correspondence and materials documenting professional activities and outside business or political pursuits, including manuscripts and drafts for articles and books and volunteer and community service records that are considered personal, even if created or received while in office, because they do not relate to agency business.

(3) Work-related personal files including emails, diaries, journals, notes, and personal calendars and appointment schedules. Though work-related, these files may be personal if they are used only as reminders and personal observations on work-related topics, not for the transaction of government business.

Pre-decisional information. Information created before the decision maker reached a final decision.

Privacy Act request. As defined in 32 CFR part 310.

Public interest. The interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about government activities.

Referral. The process whereby a DoD Component receiving the FOIA request locates documents originating with another DoD Component or federal

agency. Accordingly, the FOIA request and documents are transferred to the originating DoD Component or federal agency for response directly to the FOIA requester.

Representative of the news media. A person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Review. The time taken to conduct the initial examination of responsive documents located to determine whether one or more of the statutory exemptions permit withholding. Additionally, the time taken to redact, either manually or electronically, the documents to prepare them for release would be considered review time, as is the time to prepare and provide submitter notification and review submitter responses in accordance with E.O. 12600. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions.

Search time. Includes all time spent looking, both manually and electronically, for records responsive to a FOIA request. Electronic searches would include searching for responsive email or electronic documents whether they are located on personal computers, network servers, databases, or easily accessible storage media. The time taken by a programmer to create a program to run a requested report from a database is search time. The term ''search'' also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions of it, are responsive to the FOIA request.

Submitter. A person or entity outside of the government providing commercial or financial information or trade secrets to the government.

Technical data. Recorded information related to experimental, developmental, or engineering works that can be used to define an engineering or manufacturing process or to design, procure, produce, support, maintain, operate, repair, or overhaul material.

Toll. To delay, suspend, or hold off the effects of a statute.

Urgently needed. Information requested has a particular value that will be lost if not disseminated quickly, such as a breaking story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities, would not qualify as ''urgently needed,'' nor would a news media publication or broadcast deadline unrelated to the news-breaking nature of the information.

§ 286.4 Policy.

It is DoD policy, pursuant to 32 CFR part 285, to promote government transparency and accountability by adopting a presumption in favor of disclosure in all decisions involving the FOIA and responding promptly to FOIA requests in a spirit of cooperation.

§ 286.5 Responsibilities.

The OSD and DoD Component heads implement the procedures prescribed in this part and ensure that supplemental guidance and procedures are in accordance with 32 CFR part 285 and this part.

Subpart B—General Provisions

§ 286.6 Public access to DoD information.

(a) The public has a right to information concerning U.S. Government activities.

(1) A DoD record (referred to in this part as ''record'') requested by a member of the public who follows rules established by this part must not be withheld in whole or in part unless the record is exempt from partial or total disclosure by the FOIA.

(2) The applicability of a FOIA exemption to withhold information does not preclude the DoD Component from making a discretionary release in accordance with § 286.24(b).

(b) Executive Order 13392 directs agencies to emphasize a new citizen-centered approach to the FOIA with a results-oriented focus. Because FOIA requesters are seeking a service from the government, the DoD Components must respond courteously and appropriately to FOIA requesters. Additionally, the DoD Components must provide the public with citizen-centered ways to learn about the FOIA process, information about agency records that are publicly available, and information about the status of a person's FOIA request and appropriate information about the agency's response.

(c) The Defense Freedom of Information Policy Office (DFOIPO) maintains a handbook for the public to use in obtaining information from the Department of Defense as required by section (g)(3) of the FOIA and section 2(b)(v) of Executive Order 13392. This handbook is a short, simple explanation of what the FOIA is designed to do and how the public can use it to access DoD records. This handbook will be posted on the DFOIPO Web site and the FOIA Web site of each DoD FOIA Component listed in Appendix A to this part must have a link to it.

(d) Individuals seeking DoD information should address their FOIA requests to one of the FOIA Requester Service Center addresses listed in Appendix A to this part. If a FOIA requester is uncertain where to send a FOIA request for DoD information, the FOIA requester can call 1–866–574–4970 (toll-free) for assistance.

§ 286.7 FOIA requester service center.

(a) Each DoD FOIA Program Component listed in Appendix A to this part must establish one or more FOIA Requester Service Centers.

(b) Each FOIA Requester Service Center will have a Web site that serves to educate the public on the FOIA process. These Web sites will comply with DoD Instruction 8550.01. At a minimum, each Web site will have:

(1) The address, telephone number, facsimile number, and organizational email address to which FOIA requests can be sent.

(2) A link to the DoD FOIA handbook.

(3) A description of the types of records that can be requested.

(4) The name and contact information of the DoD Component's FOIA public liaison.

(5) Information on how a FOIA requester can obtain the status of a FOIA request (either by telephone or through the FOIA Requester Service Center Web site).

(6) A FOIA library as described in § 286.20(b) or a link to the DoD Component's FOIA library if the library is centralized.

(c) The Web sites of DoD Component Headquarters FOIA Requester Service Centers will link to the Web sites of the other FOIA Requester Service Centers within their Components.

(d) The Internet home page of every DoD Component will link to the FOIA Requester Service Center for that DoD Component.

§ 286.8 FOIA Public Liaisons.

The DoD Components listed in Appendix A to the part will submit to the Director of Administration and Management (DA&M) the names of personnel to serve as DoD Component FOIA Public Liaisons. Each DoD Component will have at least one FOIA Public Liaison. Intermediate level public liaisons may be named by those DoD Components that have a large number of FOIA Requester Service Centers.

(a) The FOIA Public Liaisons are responsible for:

(1) Ensuring that the FOIA Requester Service Centers' Web sites comply with the requirements in § 286.7(b) through (d).

(2) Assisting in the reduction of any delays in responding to FOIA requests.

(3) Increasing transparency and understanding of request's statuses.

(4) Assisting in dispute resolution.

(b) The FOIA Public Liaison for the DoD Components listed in Appendix A to this part will be appointed from DFOIPO.

§ 286.9 Unofficial release of DoD information.

Records released by the authority of this part or under circumstances in which a DoD official with the appropriate authority has authorized the release of the information to the public are considered to be in the public domain. The disclosure of exempt records, without authorization by the appropriate DoD official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of the Department of Defense to assert FOIA exemptions to withhold the same records in response to a FOIA request. Also, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

§ 286.10 Description of requested record.

The requester is responsible for providing a description of the desired record that enables the DoD Component to locate the record with a reasonable amount of effort. A reasonable description contains sufficient information to permit an organized, non-random search for the record based on the DoD Component's filing arrangements and existing retrieval systems. The DoD Component's decision on the reasonableness of the description must be based on knowledge of its files, and not on the potential volume of records that may be located and the concurrent review effort to determine releasability. The fact that a FOIA request appears broad or burdensome (e.g. a large volume of potentially responsive information) does not necessarily entitle the DoD Component to deny the FOIA request on the grounds that it does not reasonably describe the record sought.

§ 286.11 Combatant Commands.

The Combatant Commands FOIA programs are placed under OSD jurisdiction instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff. This is an exception to DoD Directive 5100.03 (available at *http://www.dtic.mil/whs/directives/corres/pdf/510003p.pdf*) in that it authorizes and requires the Combatant Commands to process FOIA requests in accordance with 32 CFR part 285 and this part.

(a) The appellate authority for the Combatant Commands is the DA&M in accordance with 32 CFR part 285. When requested, the Combatant Commands will forward directly to DFOIPO the administrative record associated with the appeal of an initial denial for records pursuant to the FOIA. The Combatant Commands will advise FOIA requesters that they have the right to appeal any adverse determinations to the DA&M.

(b) Documents originated by the Military Service components of the Combatant Commands, while performing joint exercises or operations under Combatant Command authority, are joint in nature and are under the cognizance of the Combatant Commands.

(1) Each Combatant Command will establish processing procedures that address coordinating FOIA requests for these joint documents between the Combatant Command and the Military Service component.

(2) These procedures should include the determination as to whether the IDA responsibility would be at the Combatant Command or decentralized to the Military Service component; however, appellate authority remains with the DA&M for these documents.

(3) As an exception, if the responsive documents are located within a Defense Criminal Investigative Organization (such as the Air Force Office of Special Investigations) or accident investigation file at the Military Service component, then the release, initial denial, and appellate authorities may remain with the Service or the appropriate Defense Criminal Investigative Organization. However, the Military Service Component will consult with the responsible Combatant Command during the review process before release.

(c) The FOIA Public Liaison for the Combatant Commands will be assigned from DFOIPO.

§ 286.12 Security clearances and access.

FOIA personnel require access to all records requested through their respective activities, regardless of the sensitivity or classification of the information due to the nature of their duties and responsibilities. The DoD Components must ensure that FOIA personnel have the appropriate clearances and accesses to perform their duties.

§ 286.13 Use of contractors in FOIA administration.

Pursuant to DoD Instruction 1100.22 (Available at *http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf*) and Office of Management and Budget (OMB) Circular No. A–76 (available at *http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction*), certain functions known as inherently governmental activities must not be outsourced to a contractor. The DoD Components will not outsource inherently governmental FOIA functions. Primarily, activities that require the exercise of substantial discretion in applying government authority or in making decisions for the government are inherently governmental.

(a) Inherently governmental FOIA functions include:

(1) Formulating or approving FOIA policies and procedures.

(2) Making final determinations regarding whether to treat incoming correspondence as a FOIA or Privacy Act request.

(3) Making denial or release determinations of information requested pursuant to the FOIA.

(4) Deciding any issues regarding the scope or interpretation of a FOIA request.

(5) Determining the appropriateness of claimed exemptions.

(6) Approving the approach taken in negotiations or discussions with the FOIA requester.

(7) Deciding administrative appeals.

(8) Conducting final review of all outgoing correspondence, memorandums, and release packages.

(9) Making final determinations of requests for expedited processing, fee category, and fee waivers.

(10) Executing documents for filing in litigation pursuant to the FOIA if the documents assert an official position of the Department of Defense, any DoD Components, or any other federal agencies. Contractors may prepare and execute documents describing their own actions while processing FOIA requests.

(b) Examples of FOIA functions and duties that contractors may perform (this list is not all inclusive):

(1) Redact documents.

(2) Prepare correspondence for signature by a government official.

(3) Communicate with a FOIA requester concerning the status of the FOIA request.

(4) Make recommended redactions.

(5) Enter relevant information into the DoD Component's FOIA tracking system.

§ 286.14 Records management.

FOIA records, including all correspondence and responsive records, must be maintained and disposed of in accordance with the National Archives and Records Administration, General Records Schedule 14 and DoD Component records schedules.

§ 286.15 Relationship between the FOIA and the Privacy Act.

(a) Requesters seeking records about themselves contained only in a Privacy Act system of records will have their requests processed pursuant to the 5 U.S.C. 552a (also known as the ''Privacy Act of 1974,'' as amended, and referred to in this part as the ''Privacy Act'' implemented within the DoD by 32 CFR part 310).

(1) If the Privacy Act system of records is exempt from the provisions of section (d)(1) of the Privacy Act, and if the records, or any portion thereof, are exempt pursuant to FOIA, the requester will be so advised with the appropriate Privacy Act and FOIA exemption(s). Appeals must be processed pursuant to both the FOIA and the Privacy Act.

(2) If the Privacy Act system of records is not an exempt system, a FOIA exemption cannot be claimed on the information and all information will be released to the requester. However, privacy-related information about a third party within the requester's Privacy Act file may be withheld from the requester. Case law supports the DoD Components advising the requester that information was withheld that is ''not about you.''

(b) Requesters seeking records about themselves not in a Privacy Act system of records and who cite or imply the Privacy Act will have their requests processed pursuant to the FOIA, since the Privacy Act does not apply to these records. Appeals must be processed pursuant to the FOIA.

(c) Requesters who seek both records about themselves in a Privacy Act system of records and records contained outside a Privacy Act system of records will have their requests processed pursuant to both the Privacy Act and the FOIA.

(d) Requesters will be advised in the final response letter which statutory authorities were used, inclusive of appeal rights.

§ 286.16 Non-responsive information.

(a) The DoD Components will interpret FOIA requests liberally when determining which records are responsive, and may release non-responsive information. Responsive multiple-subject documents may contain a significant amount of non-responsive information, the review of which may cause delays in responding to the FOIA requester. A determination that information is non-responsive should be made only when the DoD Component has a firm basis for concluding that the information is clearly beyond the scope of the requester's evident interest in the request. In cases where it appears highly likely that the non-responsive information may be exempt from release (e.g. the document is classified), these procedures apply.

(1) The DoD Component must contact the FOIA requester, explain that the responsive documents are multi-subject and contain a significant amount of non-responsive information, and seek the FOIA requester's concurrence to the deletion of the non-responsive information without a FOIA exemption. If the FOIA requester concurs, these redactions will be annotated on the provided document as non-responsive, and the concurrence will be reflected in the response letter.

(2) If the FOIA requester does not agree to deletion of non-responsive information without a FOIA exemption, the DoD Component will process all non-responsive and responsive information for release.

(b) The DoD Components will not apply the procedures in paragraph (a)(1) of this section to documents that have a relatively small percentage of non-responsive information. Additionally, non-responsive information will not be redacted on less than a page-by-page basis. That is, a non-responsive paragraph within an otherwise responsive page will not be redacted as non-responsive.

§ 286.17 Honoring form or format requests.

(a) The DoD Components will make reasonable efforts to:

(1) Provide the record in any form or format requested if the record is readily reproducible in that form or format in the Component's automated system.

(2) Provide records in a form that is reasonably usable.

(3) Maintain records in forms and formats that are reproducible.

(4) Use available office equipment to digitally reproduce hard copy records onto digital media.

(b) The readily reproducible criterion is not met if a DoD Component must outsource or expend significant resources to reproduce a record into the requested format. In responding to FOIA requests for records, the DoD Components will make reasonable efforts to search for records in electronic form or format if maintained in automated systems, except when such efforts would significantly interfere with the operation of the automated systems. Such determinations will be made on a case-by-case basis.

§ 286.18 Annual report.

The DoD Annual FOIA Report to the Attorney General is mandated by section (e)(1) of the FOIA and completed on a fiscal-year basis. Because of the magnitude of the requested statistics and the need for accuracy, the DoD Components will track the annual report data as FOIA requests are processed. This facilitates accurate compilation of the statistics in completing the report. Each September, DFOIPO provides instructions to the DoD Components concerning Component input for the Annual FOIA Report. Using the current edition of DD Form 2564, ''Annual Freedom of Information Act Report'' (available at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2564.pdf*), the DoD Components will forward their report to DFOIPO no later than October 31. In turn, the DA&M submits a consolidated report to the Attorney General, and places a copy of this report on the Internet for public access.

§ 286.19 Dispute resolution and the Office of Government Information Services (OGIS).

DoD FOIA Public Liaisons will work to resolve disputes with FOIA requesters. When a FOIA requester seeks OGIS assistance in resolving any disputes, DoD FOIA Public Liaisons will work with OGIS to resolve the dispute. If during this informal dispute resolution process it is determined that the disputed issue is a candidate for mediation, this process will proceed as follows:

(a) OGIS will advise DFOIPO of the possibility of mediation.

(b) The applicable DoD Component will accept or reject the offer of mediation services in accordance with the component's Alternate Dispute Resolution (ADR) policy and issuances after consulting with DFOIPO.

(c) DFOIPO will contact the DoD ADR Liaison to identify a shared neutral for the mediation process.

Subpart C—FOIA Libraries

§ 286.20 Requirements.

(a) *General.* The FOIA requires records described in section 552(a)(2) of the FOIA and created on or after November 1, 1996, to be available electronically to the public. This is known as the FOIA library. In addition to these records, the DoD Components may elect to place other records in their libraries.

(b) *DoD Component FOIA libraries.* Each DoD Component will establish one or more FOIA libraries. The DoD Components that have only one FOIA Requester Service Center will meet this requirement by having a FOIA library on its FOIA Web site. The DoD Components with more than one FOIA Requester Service Center will meet this requirement by either having one FOIA library on its primary FOIA Web site or having a FOIA library on each FOIA Requester Service Center Web site. All DoD FOIA libraries and the documents posted in the DoD FOIA libraries will meet the requirements DoD Instruction 8550.01.

(1) *Final opinions.* Section (a)(2)(A) of the FOIA requires agencies to make final opinions available to the public. This requirement is met by the Defense Office of Hearings and Appeals Web site. DoD Components are not required to post or link to these documents in their FOIA libraries.

(2) *Statements of policy.* Section (a)(2)(B) of the FOIA requires agencies to make statements of policy and interpretations available to the public that have been adopted by the agencies and are not published in the **Federal Register**. This requirement is met by the publication of DoD issuances on the DoD Issuances Web site. DoD Components are not required to post or link to these documents in their FOIA libraries.

(3) *Administrative staff manuals or instructions.* Section (a)(2)(C) of the FOIA requires agencies to make administrative staff manuals and instructions that establish policy or interpretations that affect the public available to the public. Each DoD Component FOIA library will link to its respective Component's publicly available issuance publication Web page. For example, the Air Force FOIA Web site will link to the Air Force e-Publishing Web site, and the OSD/Joint Staff FOIA Requester Service Center will link to the DoD Issuances Web site.

(4) *Frequently requested documents.* Section (a)(2)(D) of the FOIA requires agencies to make available to the public records that are or are likely to become the subject of frequent (three or more) FOIA requests. Each DoD Component FOIA library will post documents meeting this requirement.

(5) *Index.* Section (a)(2)(E) of the FOIA requires an index of the documents posted in accordance with Section (a)(2)(D). This requirement is met by the DoD Components arranging these documents in its FOIA library by topical or descriptive words, rather than by case name or numbering system, so that the public can readily locate material. Case name and numbering arrangements may also be included for DoD Component convenience.

(6) *Proactive releases.* DoD Components will post other documents in this section of their FOIA library, such as proactive releases, documents released in accordance with the Mandatory Declassification Review program, and other documents released in accordance with the FOIA. This section may also contain links to other component offices proactively releasing documents.

(c) *Exemptions.* All information that qualifies for withholding pursuant to one or more of the FOIA exemptions described in subpart D of this part will be redacted from all records in FOIA libraries.

§ 286.21 Record availability.

The DoD Components should consider enhancing their FOIA libraries with search engines and document categories to provide the public easier access.

§ 286.22 Indexes.

Sections 552(g)(1) and (2) of the FOIA require agencies to make publicly available an index of all major information systems and a description of major information and record locator systems.

(a) *Major information systems.* The DFOIPO Web site satisfies this requirement for the DoD. The DoD Components are not required to post or link to this index in their FOIA libraries.

(b) *Record locator system.* The DFOIPO Web site satisfies this requirement for the DoD. The DoD Components are not required to post or link to this index in their FOIA libraries.

§ 286.23 Section (a)(1) records.

(a) Although (a)(1) records are not required to be made available in response to FOIA requests or in FOIA libraries, they must be made available when feasible. Examples of (a)(1) records are descriptions of an agency's central and field organization and, to the extent they affect the public, rules of procedures; descriptions of forms available; instructions as to the scope and contents of papers, reports, or examinations; and any amendments, revisions, or reports of the aforementioned records.

(b) In accordance with section (a)(1) of the FOIA, each DoD Component will disclose, through publication in the **Federal Register**, information describing its organization, functions, procedures, substantive rules, and statements of general policy.

Subpart D—Exemptions

§ 286.24 General provisions.

(a) This section is not a thorough or exhaustive explanation of the applicability of the FOIA exemptions. The DoD Components may consult the Department of Justice Guide to the Freedom of Information Act (Available at *http://www.usdoj.gov/oip/foia-guide.html*) for more detailed explanations.

(b) The DoD Components will make discretionary disclosures of exempt information, if appropriate. A discretionary release is not appropriate for information determined to be exempt pursuant to Exemptions 1, 3, 4, 6, 7(C), and 7(F) of the FOIA as set out in § 286.25(a), (c), (d), (f), and (g)(1)(iii) and (vi). As for the other exemptions, which primarily protect governmental interests, a discretionary release is appropriate unless the DoD Component can reasonably identify a foreseeable harm that would result from release of the information. In making this determination, the DoD Components will consider the sensitivity of the document's content and its age.

(c) As described in this section, nine types of exempt information in records may be withheld, in whole or in part, from public disclosure unless otherwise prescribed by law. In general, a discretionary release of a record to one FOIA requester prevents the withholding of the same record pursuant to a FOIA exemption if the record is later requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related to information that has been the subject of a discretionary release.

(d) In applying exemptions, the identity of the FOIA requester and the purpose for the FOIA request are irrelevant; however, an exemption may not be invoked when the particular interest to be protected is the FOIA requester's interest.

(e) If a FOIA requester requests information that is about that FOIA requester, Exemption 6 as set out in § 286.25(f) should not be used to deny the information. However, if another FOIA requester requests the same information, it should be denied under Exemption 6.

(f) If admitting the fact of the existence or nonexistence of a record responsive to a FOIA request would itself reveal information protected from release by one of the nine exemptions, the DoD Components must neither confirm nor deny the existence or nonexistence of the requested record.

(1) This is commonly called a ''Glomar'' response (for detailed guidance on using this type of response, see Volume VII, Number I of the U.S. Department of Justice, ''FOIA Update,'' (available at: *http://www.justice.gov/oip/foia_updates/Vol_VII_1/page5.htm*), and the appropriate exemption must be cited by the DoD Component in the response. This situation most commonly arises with Exemptions 1, 6, and 7 as set out in § 286.25(a), (f), and (g); however, it could arise with other exemptions.

(2) A ''refusal to confirm or deny'' response must be used consistently by the DoD Components, not only when a record exists, but also when a record does not exist. If not used consistently, the pattern of a ''no record'' response when a record does not exist, and a ''refusal to confirm or deny'' when a record does exist, risks disclosing exempt information.

§ 286.25 Applying the FOIA exemptions.

This section describes the nine types of exempt information in records and procedures for applying them.

(a) *Exemption 1.* Pursuant to section (b)(1) of the FOIA, records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized pursuant to the criteria established by an existing Executive order establishing classification criteria and implemented by regulation, such as DoD Manual 5200.01 Volume 1 (available at *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol1.pdf*), are exempt from disclosure. If the responsive information is not classified when the FOIA request is submitted, a classification review may be undertaken by the DoD Component to determine whether the information should be classified. The procedures in DoD Manual 5200.01 Volume 1 apply in this situation. If the information qualifies as Exemption 1 information under this paragraph (a), there is no discretion regarding its release. The FOIA requester will be advised which sections of the Executive order apply in determining that the information is classified. Exemption 1 also is invoked when:

(1) Individual items of unclassified information, when compiled, reveal additional associations or relationships that meet the standard for classification pursuant to an existing Executive Order and DoD Manual 5200.01 Volume 1, and are not otherwise revealed in the individual items of information. This is known as the ''mosaic'' or ''compilation'' approach.

(2) The fact of the existence or nonexistence of a record would itself reveal classified information.

(b) *Exemption 2.* Pursuant to section (b)(2) of the FOIA, records related solely to the internal personnel rules and practices of the Department of Defense or any of the DoD Components are exempt from disclosure. DoD Components should be aware that the U.S. Supreme Court effectively eliminated the formulation of this exemption that was previously referred to as Exemption 2 (High).

(c) *Exemption 3.* Pursuant to section (b)(3) of the FOIA, records concerning matters that another statute specifically exempts are exempt from disclosure. This exemption allows for the withholding of information because its release is prohibited by another statute only if one of two disjunctive requirements is met. The statute requires that the information be withheld from the public in such a manner as to leave no discretion on the issue, or the statute establishes particular criteria for withholding or refers to particular types of matters to be withheld. For any statute enacted after October 28, 2009, in order to qualify as an Exemption 3 statute under this paragraph (c) it must cite to section (b)(3) of the FOIA. DFOIPO maintains on its Web site a list of Exemption 3 statutes used within the Department of Defense.

(1) *Personally identifying information of DoD personnel.* Title 10 U.S.C. 130b authorizes the withholding of names, ranks, duty addresses, official titles, and pay information of DoD personnel (civilian and military) in overseas, sensitive, or routinely deployable units when this information is requested pursuant to the FOIA. The United States Special Operations Command and its components qualify as sensitive units pursuant to 10 U.S.C. 130b. Initial denial authorities (IDAs) within the Department of Defense should withhold this information pursuant to Exemption 3 under this paragraph (c) subject to the exceptions listed in paragraphs (c)(1)(i) and (ii) of this section. Information withheld pursuant to Exemption 3 and this statute also should be withheld pursuant to Exemption 6 as set out in paragraph (f) of this section, and, depending on the type of records where the information is located, Exemption 7(C) as set out in paragraph (g)(1)(iii) of this section.

(i) *Civilian and military officials whose duties make them known to the public.* The DoD Components may make a discretionary release of names and duty information of personnel in overseas, sensitive, or routinely deployable units who, by the nature of their position and duties, frequently interact with the public. Officials whose identities may be released include general and flag officers, public affairs officers (PAOs), other personnel designated as official command spokespersons, and other senior officials whose identities are known to the public through the performance of their duties.

(ii) *Release of information by DoD PAOs.* This provision does not change DoD instructions for PAOs and the rules used by public affairs offices to release information to the general public and the media. Public affairs offices should continue to release information in accordance with current DoD issuances, Privacy Act restrictions, and security classifications.

(2) *Sensitive information of foreign governments and international organizations.* Title 10 U.S.C. 130c authorizes the withholding of unclassified sensitive information of a foreign government or international organization. IDAs within the Department of Defense must withhold this information pursuant to Exemption 3 under this paragraph (c) as specified in this paragraph (c)(2) (for procedural instructions, see § 286.28(e)(2)) when they make all three of these determinations concerning the requested information:

(i) The information was provided to the Department of Defense by (or produced in cooperation with) a foreign government or international organization.

(ii) The information is withheld from public disclosure by the foreign government or international organization (the foreign government or international organization should make this representation in writing).

(iii) Any of these three conditions are met:

(A) The foreign government or international organization requests in writing that the information be withheld.

(B) The foreign government or international organization provides the information to the Department of Defense on the condition that it is not released to the public.

(C) DoD regulations specify the release of the requested information would have an adverse effect on the ability of the Department of Defense to obtain the same or similar information in the future.

(3) *CISI.* In accordance with 10 U.S.C. 130e, the Secretary of Defense and the DA&M may exempt CISI from release under the FOIA. IDAs must obtain this written determination in accordance with the procedures in § 286.28(k) before withholding CISI from a FOIA requester.

(4) *Military Flight Operations Quality Assurance (MFOQA) system data file.* In accordance with 10 U.S.C. 2254a, the Secretary of Defense and the DA&M may exempt MFOQA system data files from release under the FOIA. IDAs must obtain this written determination in accordance with the procedures in subpart E of this part before withholding MFOQA system data file information from a FOIA requester.

(d) *Exemption 4.* Pursuant to section (b)(4) of the FOIA, certain non-government financial information exempt from disclosure.

(1) This exemption protects:

(i) Trade secrets; or

(ii) Information that is:

(A) Commercial or financial.

(B) Obtained from a person or entity outside of the Federal Government.

(C) Privileged or confidential.

(2) Commercial or financial information that is voluntarily submitted to the U.S. government, absent any exercised authority prescribing criteria for submission, may be categorically protected provided it is not customarily disclosed to the public by the submitter. Examples of exercised authorities prescribing criteria for submission are statutes, Executive orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information pursuant to these authorities should be analyzed in accordance with paragraph (d)(3) of this section and § 286.28(f)(1).

(3) Commercial or financial information that is not voluntarily provided to the government is considered ''confidential'' for Exemption 4 under this paragraph (d) if its disclosure is likely to:

(i) Impair the government's ability to obtain necessary information in the future (known as the ''impairment prong'');

(ii) Harm an identifiable private or governmental interest; or

(iii) Cause substantial harm to the competitive position of the person providing the information.

(4) Examples of information that may be protected by Exemption 4 under this paragraph (d) include:

(i) Commercial or financial information received in connection with loans, bids, contracts, or proposals.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures.

(iii) Personal statements given during inspections, investigations, or audits.

(iv) Financial data provided by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, or developed in part with federal funds and in part at private expense. The contractor or subcontractor must retain legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and 48 CFR 227.71 and 227.72. Technical data developed exclusively with federal funds may be withheld pursuant to Exemption 3 as set out in paragraph (c) of this section if it meets the criteria of 10 U.S.C. 130 and 48 CFR 227.71 and 227.72.

(vii) Information copyrighted pursuant to 17 U.S.C. 106 if release of copyrighted material otherwise meets the standards of Exemption 4 under this paragraph (d).

(5) When the DoD Components receive FOIA requests for information that could be protected by this exemption, they will notify the submitter of the information (see § 286.28(f)(1) for notification procedures). Submitters having any objections to disclosure must submit a detailed written statement that specifies all grounds for withholding any portion of the information pursuant to Exemption 4 under this paragraph (d). This statement must explain why the information is a trade secret or commercial or financial information that is privileged or confidential (e.g., how release would cause substantial competitive harm).

(e) *Exemption 5.* Pursuant to section (b)(5) of the FOIA, inter- or intra-agency memorandums or letters containing information considered privileged in civil litigation are exempt from disclosure. Information that has been considered privileged in civil litigation is information that is usually privileged in the civil discovery context. Merely being an internal record is an insufficient basis for withholding pursuant to this exemption. Records that are not available routinely through the discovery process during litigation with the agency because they are privileged can be withheld pursuant to this exemption. The most common discovery privileges incorporated into Exemption 5 under this paragraph (e) are the deliberative process, the attorney work product, and the attorney-client privilege.

(1) *Threshold.* A document must meet the threshold requirement of being an inter- or intra-agency document before the proper privilege can be identified in any given case. Because in many instances the U.S. government must seek expert advice from external entities (or consultants), the courts developed an ''outside consultant'' test that helps in determining whether such an external entity qualifies as an ''agency'' for this exemption. If an entity meets the test, then documents that it originates may be protected by Exemption 5 under this paragraph (e). If the outside consultant is an interested party in the decision-making process, then this threshold is not met.

(2) *Privileges.* The privileges and types of information protected by Exemption 5 under this paragraph (e) include, but are not limited to:

(i) *Deliberative process privilege.* (A) To qualify for this privilege, the information must be both deliberative and pre-decisional (see § 286.3), and be part of the decision-making process. Information that is factual cannot be withheld from a FOIA requester pursuant to this privilege except when:

(*1*) The author of a document selects specific facts out of a larger group of facts and this very act is deliberative in nature. This information qualifies for withholding because its release would reveal the author's internal thought processes; or

(*2*) The factual information is so inextricably connected to the deliberative material that its disclosure would expose or cause harm to the agency's deliberations.

(B) A direction or order from a superior to a subordinate usually does not qualify as a deliberative process document if it constitutes policy guidance or a decision. However, correspondence from a superior to a subordinate may qualify if it discusses preliminary matters or requests information or advice relied upon in the decision-making process.

(C) An agency's final decision and post-decisional documents related to the decision cannot be withheld pursuant to the deliberative process privilege.

(D) Examples of deliberative process documents include:

(*1*) Staff papers, including after-action reports, inspection reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(*2*) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by internal boards, committees, councils, groups, panels, conferences, commissions, task forces, or other

similar groups that are formed for obtaining advice and recommendations.

(*3*) Drafts of final records.

(*4*) Information of a speculative, tentative, or evaluative nature, or such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate U.S. government functions.

(*5*) Agency materials underlying the President's budget decisions as described in OMB Circular No. A–11 (available at *http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc/*). This includes planning, programming, and budgetary information that is involved in the defense planning and resource allocation process and out-year discretionary data.

(ii) *Attorney-client privilege.* This privilege protects confidential communications between an attorney and a client (or multiple clients that share a common interest) relating to legal matters for which the client has sought professional advice. The information that the client supplies to the attorney, the advice that the attorney gives to the client in return, and communications between attorneys that reflect client-supplied information are protected by this privilege. Unlike the deliberative process privilege, with the attorney-client privilege all the information should be withheld, including the facts, unless the client waives the privilege.

(iii) *Attorney work product privilege.* This privilege protects documents prepared by an attorney or at an attorney's direction in reasonable anticipation of litigation. Unlike the deliberative process privilege, with the attorney work product privilege all the information can be withheld, including the facts. This privilege still can be used after the litigation is complete.

(iv) *Government trade secret privilege.* This privilege protects trade secrets or other confidential research, development, or commercial information owned by the government, premature release of which is likely to affect the government negotiating position or other commercial interest.

(v) *Safety investigation privilege.* This privilege protects privileged safety information as defined in DoD Instruction 6055.07 (available at *http://www.dtic.mil/whs/directives/corres/pdf/605507p.pdf*).

(vi) *Presidential communications privilege.* This privilege protects communications among the President and Presidential advisors created to assist the President in the exercise of non-delegable constitutional duties.

(f) *Exemption 6.* Pursuant to section (b)(6) of the FOIA, information in personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy, is exempt from disclosure. If the information qualifies as Exemption 6 under this paragraph (f) information, there is no discretion in its release.

(1) When considering applying this exemption, an agency must balance the public interest in disclosure and the individual's privacy interest. When there is no public interest in the requested information, the information can be withheld even if there is only a negligible privacy interest. The public interest to be considered when applying this exemption is whether the information sheds light on the operations or activities of the government. The FOIA requester has the burden to show that there is a public interest in disclosure.

(2) A privacy interest may exist in personal information even though the information has been disclosed at some place and time. This is known as the concept of practical obscurity. For example, information that was once publicly known (e.g. a court-martial trial 40 years ago) may no longer be in the public's eye and has faded from memory. In this case, the privacy interest in this type of situation may have increased over time, the public interest may have decreased over time, and therefore an agency should now withhold the once-public information, since the balance of interests has now shifted in favor of privacy.

(3) Examples of other files containing personal information similar to that in personnel and medical files include:

(i) Files compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Military Services, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters where administrative action, including disciplinary action, may be taken.

(4) Because of the national emergency declared by the President on September 14, 2001, the DoD Components are authorized to withhold lists of personally identifying information of DoD personnel, including active duty military personnel, civilian employees, contractors, members of the Reserve Components, and military dependents under Exemption 6 under this paragraph (f). Additionally, personally identifying information of DoD military and civilian personnel who are assigned to overseas, sensitive, or routinely deployable units is exempt from release pursuant to Exemption 3 as set out in paragraph (c) of this section, with 10 U.S.C. 130b as the withholding statute. Names and duty addresses (postal and email) published in telephone directories, organizational charts, rosters, and similar materials for personnel are considered ''lists of personally identifying information,'' and therefore qualify for withholding pursuant to Exemption 6 (and Exemption 3 as set out in paragraph (c) of this section if applicable).

(5) Home addresses, telephone numbers, and private email addresses are usually protected by this exemption. This includes home addresses and military quarters addresses not associated with the occupants' names.

(6) This exemption must not be used in an attempt to protect the privacy of a deceased person. It may be used to protect the privacy of the deceased person's surviving family members if disclosure would rekindle grief, anguish, pain, embarrassment, or result in a disruption of their peace of mind. In such situations, the DoD Components must balance the surviving family members' privacy interests and the public's interest to determine its releasability.

(7) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal information containing a privacy interest, and the public interest in disclosure does not outweigh the privacy interest. In this situation, the DoD Components must neither confirm nor deny the existence or nonexistence of the record being requested (Glomar response) and Exemption 6 under this paragraph (f) must be cited.

(g) *Exemption 7.* Pursuant to section (b)(7) of the FOIA, records or information compiled for law enforcement purposes are exempt from disclosure upon the identification of one of the six conditions delineated in paragraphs (g)(1)(i) through (vi) of this section. Law enforcement purposes include civil, criminal, military, and regulatory, including the implementation of Executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for, law enforcement purposes.

(1) *Conditions where Exemption 7 applies*—(i) *Exemption 7(A).* This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings (section (b)(7)(A) of the FOIA). The DoD Components can use Exemption 7(A) under this paragraph (g)(1)(i) during the course of law enforcement proceedings, when there is a prospective law enforcement proceeding and during any subsequent or pending proceedings resulting from the original proceeding.

(ii) *Exemption 7(B).* This exemption applies to records compiled for law enforcement purposes when disclosure would deprive a person of the right to a fair trial or to an impartial adjudication (section (b)(7)(B) of the FOIA).

(iii) *Exemption 7(C).* This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a living person, including surviving family members of an individual identified in such a record (section (b)(7)(C) of the FOIA).

(iv) *Exemption 7(D).* This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis, and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (section (b)(7)(D) of the FOIA).

(v) *Exemption 7(E).* This exemption applies to records compiled for law enforcement purposes when disclosure would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law (section (b)(7)(E) of the FOIA).

(vi) *Exemption 7(F).* This exemption applies to records compiled for law enforcement purposes when disclosure could reasonably be expected to endanger the life or physical safety of any individual (section (b)(7)(F) of the FOIA).

(2) *Examples of Exemption 7 applications.* (i) Statements of witnesses and other material developed during the course of an investigation and all materials prepared in connection with related government litigation or adjudicative proceedings may be exempt from disclosure pursuant to Exemptions 7(A), 7(C), and 7(D) as set out in paragraphs (g)(1)(i), (iii), and (iv) of this section.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States may be exempt from disclosure pursuant to Exemptions 7(A) and 7(C) as set out in paragraphs (g)(1)(i) and (iii) of this section.

(iii) Information obtained in confidence, expressed or implied, during a criminal investigation by a criminal law enforcement agency or a lawful national security intelligence investigation may be exempt from disclosure pursuant to Exemptions 7(A), 7(C), and 7(D) as set out in paragraphs (g)(1)(i), (iii), and (iv) of this section. National security intelligence investigations include background security investigations and those investigations conducted to obtain affirmative or counterintelligence information.

(iv) Emergency action plans, guidelines for response to terrorist attacks, analyses of security procedures, and other sensitive information that could prove deadly if obtained by those seeking to do harm to the public on a large scale may be exempt from disclosure pursuant to Exemptions 7(E) and 7(F) as set out in paragraphs (g)(1)(v) and (vi) of this section.

(h) *Exemption 8.* Pursuant to section (b)(8) of the FOIA, records in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions are exempt from disclosure.

(i) *Exemption 9.* Pursuant to section (b)(9) of the FOIA, records containing geological and geophysical information and data (including maps) concerning wells are exempt from disclosure.

§ 286.26 Exclusions.

Section (c) of the FOIA contains three special protection provisions referred to as record exclusions. Of these exclusions, only two are applicable to the Department of Defense. These exclusions expressly authorize DoD law enforcement components to treat especially sensitive records under certain specified circumstances as not subject to the requirements of the FOIA. The DoD Component considering invoking one of these exclusions must first consult with legal counsel and with DFOIPO. In turn, DFOIPO will consult with the Office of Information Policy, Department of Justice. Because of the possibility of the existence of excluded records, DoD law enforcement components will respond to all FOIA requests when no records are located or when located records fall within an exclusion by stating that no records responsive to the FOIA were found. The instances where a FOIA request involves excluded records are:

(a) The records or information are described in section (b)(7)(A) of the FOIA and the following two conditions are met:

(1) The investigation or proceeding involves a possible violation of criminal law, and

(2) There is reason to believe that the subject of the investigation or proceeding is unaware of the pending investigation or proceeding and the disclosure of the existence of the records could reasonably be expected to interfere with law enforcement proceedings.

(b) Informant records maintained by a DoD law enforcement component under an informant's name or personal identifier are requested by a third party using the informant's name or personal identifier unless the informant's status as an informant has been officially confirmed.

Subpart E—FOIA Request Processing

§ 286.27 General provisions.

(a) *Requests from private parties.* (1) The provisions of the FOIA are reserved for members of the public and are not to be used by government agencies seeking official information.

(2) When personally identifying information in a record is requested by the subject of the record or the subject's representative, and the information is contained within a Privacy Act system of records, it is processed pursuant to the Privacy Act. If a Privacy Act exemption applies to the system of records, then the request is processed pursuant to the FOIA. The DoD Components must comply with 32 CFR part 310 to confirm the identity of the requester.

(b) *Requests from local or State government officials, Congress, and foreign governments.* (1) Local or State government officials, foreign officials requesting on behalf of their government, foreign individuals, or foreign organizations requesting DoD Component records pursuant to the FOIA are considered the same as any other FOIA requester.

(2) The FOIA does not apply to the records of a DoD Component that is an element of the Intelligence Community as defined in 50 U.S.C. 401a(4) if the FOIA request is from a non-U.S. government entity or representative.

(3) Requests from members of Congress who are not seeking records on behalf of a congressional committee or subcommittee, or on behalf of the House of Representatives or the Senate sitting as a whole, should not be processed through FOIA channels; however, any release of information will be consistent with a release to any individual pursuant to the FOIA and its withholding exemptions. In these cases, the member will not be provided with FOIA appeal rights.

(4) Requests submitted by members of Congress on behalf of a congressional committee or subcommittee or on behalf of the House of Representatives or the Senate sitting as a whole that are received by the DoD Component's FOIA Requester Service Center are referred to the appropriate office that handles legislative inquiries for processing pursuant to DoD Instruction 5400.04 (available at *http://www.dtic.mil/whs/directives/corres/pdf/540004p.pdf*) or supplementing DoD Component directives. Such requests are not processed pursuant to the FOIA.

(5) If a member of Congress chooses to request DoD records pursuant to the FOIA, then the provisions of this part apply.

(6) Constituent requests for DoD records that are forwarded by members of Congress are processed as FOIA or Privacy Act requests, as applicable. The member forwarding the request will be advised of these circumstances.

(7) The Office of the Assistant Secretary of Defense for Legislative Affairs will be notified of every instance when a member of Congress objects that the DoD has not responded to a congressional request for information in the form it was originally requested, whether that request is made by an individual member or a congressional committee.

(8) Requests from officials of foreign governments that do not invoke the FOIA are referred to the appropriate office authorized to disclose official DoD information to foreign governments, and the requester is so notified.

(c) *Privileged release outside of the FOIA to U.S. Government officials.* (1) Records exempt from release to the public pursuant to the FOIA may be disclosed in accordance with DoD Component regulations to another federal agency in response to an official request from the other federal agency in accordance with applicable law and regulations, as determined by the DoD Component head or designee. Such disclosures are not official releases to the public under the FOIA.

(2) The DoD Components will inform officials receiving records in accordance with the provisions of this paragraph that those records are exempt from public release pursuant to the FOIA. The DoD Components also will advise officials of any special handling instructions. Classified information is subject to the provisions of Volumes 2 and 3 of DoD Manual 5200.01. Information contained in a Privacy Act system of records is subject to 32 CFR part 310.

§ 286.28 Processing procedures.

(a) *Receipt and control.* When it receives a FOIA request, a FOIA Requester Service Center must open a file in a formal control system designed for accountability and compliance with the FOIA. The control system should include the data elements needed to compile the statistics required in the Annual FOIA Report and other reports required by another authority. Each request is assigned a unique tracking number which is included in all correspondence with the requester.

(b) *Prompt action on FOIA requests.* (1) When unusual or exceptional circumstances prevent a FOIA Requester Service Centers from making a final response determination within the statutory time period, it will advise the FOIA requester in writing and provide the FOIA requester an opportunity to narrow the scope of the FOIA request or arrange for an alternative timeframe. FOIA Requesters Service Centers will, as a matter of good practice, be available to assist requesters in the formulating of requests.

(i) Unusual circumstances are:

(A) The responsive documents are located at a facility geographically separated from the FOIA Requester Service Center processing the FOIA request.

(B) The responsive documents are voluminous.

(C) One or more other agencies or DoD Components have a substantial interest in either the determination or the subject matter of the FOIA request, requiring the FOIA Requester Service Center processing the FOIA request to consult with the other agencies or DoD Components.

(ii) Exceptional circumstances are not affirmatively defined in the FOIA; however, a predictable agency workload of requests may be considered an exceptional circumstance if the DoD Component can demonstrate reasonable progress in reducing its backlog of pending requests.

(2) DoD Components receiving a misdirected FOIA request for records originating with another DoD Component will refer the FOIA request to the correct DoD Component and inform the receiving DoD Component of the date the FOIA request was originally received. Additionally, it will advise the FOIA requester of this transfer. This routing requirement only applies to those FOIA requests directed to a DoD Component that seek documents for which the DoD is responsible. If responsibility for the requested records rests with a non-DoD agency (e.g., Department of State), then the DoD Component need only advise the FOIA requester to submit the FOIA request to the proper agency. Misdirected FOIA requests will not be transferred to a law enforcement or Intelligence Community agency or DoD Component. Instead, the FOIA Requester Service Center receiving the request will contact the for guidance if there is reason to believe that the law enforcement or Intelligence Community agency or DoD Component would have responsive records.

(3) DoD Components will provide interim responses when they are unable to make a final determination within 20 working days and are encouraged to further communicate with the FOIA requester before the final response, if appropriate. These communications may include acknowledging receipt of the FOIA request and negotiating with the FOIA requester concerning the scope of the FOIA request, the response timeframe, and fee agreement. However, such communications do not constitute a final response determination. The initial interim response will include as a minimum:

(i) The date the 20-day statutory time period started for the FOIA request.

(ii) The tracking number for the FOIA request.

(iii) Contact information on how the FOIA requester can obtain information about the processing of the FOIA request.

(4) The statutory time period to make a release determination on a FOIA request usually begins on the date when the FOIA Requester Service Center responsible for the requested records receives the FOIA request. However, if the FOIA request was originally misdirected to another FOIA Requester Service Center within the same Component, the statutory time period begins on the day the appropriate DoD Component FOIA Requester Service Center receives the FOIA request, or 10 working days after it was received by the FOIA Requester Service Center

originally receiving the FOIA request, whichever date is earlier. When a FOIA request is sent directly to a DoD Component office not designated to receive FOIA requests, the statutory time period does not begin until it is received by a FOIA Requester Service Center.

(5) The 20-working-day statutory period for responding to a FOIA request begins only when a perfected FOIA request (see § 286.3) is received. After this time, a DoD Component FOIA Requester Service Center may toll the statutory time period for only two reasons. In both situations, the FOIA requester's response to the agency's request ends the tolling period.

(i) The time period may be tolled one time when the FOIA Requester Service Center goes back to the FOIA requester and reasonably asks for additional information (not connected to the assessment of fees).

(ii) The time period may be tolled if it is necessary for the FOIA Requester Service Center to clarify issues regarding fee assessment with the FOIA requester. There is no limit given for the number of times an agency may go back to a FOIA requester to clarify fee assessment issues, which sometimes may need to be done in stages as the records are located and processed.

(c) *Estimated completion date.* When a FOIA Requester Service Center receives an inquiry regarding the status of a request, it will provide the requester an estimated date when the FOIA request is expected to be completed.

(d) *Multi-track processing.* (1) FOIA Requester Service Centers will establish a minimum of three processing tracks, all based on a first-in and first-out concept and with FOIA requests ranked by date of receipt. One track is for simple FOIA requests, one for complex FOIA requests, and one for expedited FOIA requests. Additional tracks may be established by FOIA Requester Service Centers. Each FOIA Requester Service Center determines which processing track a FOIA request is placed. FOIA requesters whose FOIA requests do not qualify for the simple processing track should be given an opportunity to limit the scope of the FOIA request in writing in order to qualify for it.

(2) FOIA Requester Service Centers will place received referrals and consultations in processing tracks based on the date that the FOIA request was received by the agency that received the initial FOIA request. Separate processing queues dedicated only to consultations may be established FOIA Requester Service Centers.

(e) *Expedited processing.* Section (a)(6)(E) of the FOIA establishes two circumstances that merit expedited processing of FOIA requests: Compelling need and other cases determined by the agency. The same criteria apply to FOIA requests for expedited processing of administrative appeals. The DoD Components must make expedited processing determinations within 10 calendar days after receipt of the FOIA request. Once the DoD Component decides to grant expedited processing, the FOIA request is processed as soon as practicable. Actions by the DoD Components to initially deny or affirm the initial denial on appeal of a FOIA request for expedited processing, and failure to respond in a timely manner, are subject to judicial review.

(1) *Compelling need.* Expedited processing is granted to a FOIA requester upon a specific request for such and demonstrations of a compelling need (see § 286.3) for the information.

(i) It is the responsibility of the FOIA requester to demonstrate that the requested information is urgently needed.

(ii) The requester must include with the request a demonstration of a compelling need that the FOIA requester must certify as true and correct to the best of the FOIA requester's knowledge and belief.

(2) *Imminent loss of due process rights.* Expedited processing is granted to a FOIA requester if loss of substantial due process rights is imminent. A demonstration of imminent loss of substantial due process rights by the FOIA requester includes a description of the due process rights that would be lost and a statement certified to be true and correct to the best of the FOIA requester's knowledge. This statement must be with the FOIA request for it to be considered and responded to within the 10 calendar days required for decisions on expedited access. If the DoD Component decides to expedite the FOIA request for this reason, it may be processed in the expedited track behind those requests qualifying for compelling need.

(3) *Humanitarian need.* Expedited processing is granted when the failure to obtain the requested information on an expedited basis could reasonably be expected to harm substantial humanitarian interests.

(f) *Responsive documents originated by a non-government source*—(1) *Commercial or financial information.* The provisions of E.O. 12600 apply when a FOIA request is received for a record that arguably contains information exempt from release pursuant to Exemption 4 of the FOIA as set out in § 286.25(d). A government contract is an example of this type of record.

(i) The submitter of the confidential commercial information must be notified promptly of a FOIA request for this information and afforded reasonable time to present any objections concerning release. If the submitter does not respond by the specified time, he or she will be considered to have no objection to the disclosure of the information. The submitter notice letter should include, as an attachment, a copy of the requested information. If notification of a voluminous number of submitters is required, such notification may be done by posting or publishing the notice in a place that would reasonably fulfill the notification requirement.

(ii) If the submitter objects to disclosure, he or she must submit a detailed written statement that specifies all grounds for withholding any portion of the information pursuant to Exemption 4 of the FOIA as set out in § 286.25(d). This statement must show why the information is a trade secret or commercial or financial information that is privileged or confidential (i.e., release would cause substantial competitive harm). Submitter objections are evaluated by the DoD Component and the final decision to disclose information claimed to be exempt pursuant to Exemption 4 will be made by an appropriate official.

(iii) When a substantial issue has been raised by the submitter, the DoD Component may seek additional information and afford the submitter a reasonable opportunity to present arguments on the legal and substantive issues involved prior to making an agency determination.

(iv) If a DoD Component decides to disclose commercial business information over the objection of a submitter, the Component must provide the submitter written notice, which includes:

(A) A statement of the reasons why each of the submitter's disclosure objections were not sustained;

(B) A copy of the information to be disclosed;

(C) A specified disclosure date, which must be a reasonable time after the notice.

(v) The FOIA requester is notified when:

(A) The DoD Component notifies the submitter of the FOIA request and asks for comments.

(B) The DoD Component advises the submitter that the requested information will be released over the submitter's objections.

(vi) The submitter is notified immediately if the FOIA requester brings suit seeking to compel disclosure of the submitter's information.

(vii) If the submitted information is a proposal provided in response to a solicitation for a competitive proposal, and the proposal is in DoD possession and control and meets the requirements of 10 U.S.C. 2305(g), the proposal will not be disclosed, and no submitter notification or analysis are required. The proposal must be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and Exemption 3 of the FOIA as set out in § 286.25(c). This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between the DoD Component and the submitter of the proposal. In these situations, paragraphs (f)(1)(i) through (vi) of this section are followed except for sealed bids that are opened and read to the public.

(viii) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and the record or information would customarily not be released to the public, the submitter need not be notified. The DoD Component withholds this information pursuant to Exemption 4 of the FOIA as set out in § 286.25(d).

(ix) In anticipation of future FOIA requests, the DoD Components may establish procedures whereby submitters are asked to provide their written comments on the releasability of the submitted information at the time the information is submitted. However, this procedure does not alleviate the DoD Components of the responsibility of evaluating the submitter's response before the information is released or denied pursuant to the FOIA.

(2) *Foreign government or international organization information.* The coordination provisions of this paragraph (f)(2) apply to the release of responsive information received from foreign governments or international organizations, such as the North Atlantic Treaty Organization, United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or the International Committee of the Red Cross.

(i) DoD Components should coordinate directly with their foreign government counterparts when processing foreign government information responsive to a FOIA request. Coordination also may be made through the Department of State or the specific foreign embassy.

(ii) The Office of Freedom of Information (OFOI), which is also the OSD/Joint Staff FOIA Requester Service Center, has a coordination channel with the United Kingdom Ministry of Defence (UK MOD). (See the Appendix A to this part for the OSD/Joint Staff FOIA Requester Service Center address.) When a DoD Component locates UK MOD-originated information responsive to a FOIA request and it is unable to coordinate with a UK MOD counterpart it may forward the information to OFOI for consultation, which will coordinate with the UK MOD for release. The UK MOD release recommendation will be forwarded by OFOI back to the DoD Component for direct response to the FOIA requester.

(iii) When the DoD Components locate NORAD documents in their files responsive to a FOIA request, they will refer the documents to the United States Northern Command FOIA Requester Service Center, which will consult with NORAD.

(iv) Coordination with most international organizations may be made directly with those organizations.

(v) When a foreign government or international organization asks the Department of Defense to withhold classified information originated by that foreign government or international organization, it is withheld pursuant to Exemption 1 of the FOIA as set out in § 286.25(a).

(vi) If the DoD Component is asked to withhold sensitive unclassified information originated by a multinational organization or foreign government, then the DoD Component withholds it pursuant to Exemption 3 of the FOIA as set out in § 286.25(c) and references the relevant statute as 10 U.S.C. 130c. To qualify for withholding, the information must meet these limitations.

(A) If the information came into possession or control of the Department of Defense prior to October 30, 2000, and more than 25 years prior to receipt of the FOIA request, the DoD Component notifies the foreign government or international organization of the request for disclosure. The information then qualifies for withholding only if the foreign government or international organization requests in writing that the information not be disclosed for a specific period of time. This date can be extended with a later request by the foreign government or international organization.

(B) If the information came into possession or control of the Department of Defense on or after October 30, 2000, the information cannot be withheld after the release date specified by the foreign government or international organization. When one or more foreign governments or international organizations provided the information, the latest date specified by any of them will be used. If no release date was specified, and the information came into the possession of the DoD Component more than 10 years prior to receipt of the FOIA request, the procedures set forth in paragraph (f)(2)(vi)(A) of this section apply.

(g) *File of initial denials.* Copies of all initial denials are maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied for any of the reasons contained in § 286.25 must be maintained for a period of 6 years to meet the statute of limitations requirement.

(h) *Processing the receipt of FOIA fees.* The Treasurer of the United States has established an account for FOIA receipts, Receipt Account 3210. When depositing the receipts, the account number must be preceded by the appropriate disbursing office 2-digit prefix. This account will be used for depositing all FOIA receipts except for those of working capital and non-appropriated funded activities. Those activities must establish their own procedures for depositing FOIA receipts to the applicable fund. All checks or money orders remitting FOIA fees should be made payable to the U.S. Treasurer. For more information on technical data fees, see § 286.34.

(i) *Creating a record.* A record must exist and be in DoD possession and control at the time of the search to be subject to this part and the FOIA. The DoD Components are not obligated to create, compile, or answer questions to satisfy a FOIA request. However, the DoD Components may compile a new record when so doing would result in a more useful response to the FOIA requester or would be less burdensome to the DoD Component than providing existing records. This could be the case when a FOIA requester wants, for example, a list of all travel locations for a single senior official. Instead of processing the large number travel documents, the DoD Component may wish to compile a list of travel locations extracted from the documents. Any such compilation should be coordinated with and approved by the FOIA requester. The cost of creating or compiling such a record may not be charged to the FOIA requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record. Fee assessments must

be in accordance with subpart F of this part.

(j) *Electronic records and searches*—(1) *Significant interference.* Section (a)(3)(C) of the FOIA allows DoD Components to not conduct a search for responsive documents if the search would cause significant interference with the operation of the DoD Component's automated information system.

(2) *Business as usual approach.* A ''business as usual'' approach exists when the DoD Component has the capability to process a FOIA request for electronic records without a significant expenditure of monetary or personnel resources. DoD Components are not required to conduct a search that does not meet this business as usual criterion.

(i) Creating computer programs or purchasing additional hardware to extract email that has been archived for emergency retrieval usually are not considered business as usual if extensive monetary or personnel resources are needed to complete the project.

(ii) Creating a computer program that produces specific requested fields or records contained within a well-defined database structure usually is considered business as usual. The time to create this program is considered as programmer or operator search time for fee assessment purposes and the FOIA requester may be assessed fees in accordance with subpart F of this part. However, creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file is not considered business as usual, but a special service.

(3) *Data links.* The DoD Components are not required to expend DoD funds to establish data links that provide real-time or near-real-time data to a FOIA requester.

(k) *CISI and MFOQA data files.* IDAs may deny CISI and MFOQA system data files from release under Exemption 3 of the FOIA as set out in § 286.25(c) after the DA&M has made a written determination that the information is exempt.

(1) When DoD Components have reason to believe that information responsive to a FOIA request is CISI or MFOQA system data file information, they will submit a package to the DA&M, through DFOIPO, recommending exemption of the requested information. The package will contain, at a minimum:

(i) A copy of the initial FOIA request.

(ii) A copy of the documents in electronic format, with only the CISI or MFOQA system data file information marked. Do not indicate information that will be denied under any other exemption.

(iii) Details on how the information recommended for exemption meets the threshold of qualifying as CISI or as MFOQA system data file.

(iv) A thorough explanation of the harm that could reasonably be expected to result if the information is released. This explanation must be as specific as possible to allow the DA&M to make a fully informed determination; however, it should contain only publicly releasable information since the DA&M's determination, accompanied by a statement of the basis for determination, will be made available on the DFOIPO Web site. An explanation could be an attachment from a subject matter expert;

(v) Any documentation of the public interest in the release of the information. This could be provided to the DoD Component by the FOIA requester or other interested parties supporting the FOIA request.

(2) Upon receipt of the package, DFOIPO will:

(i) Review it to determine whether the DoD Component's recommendations meet the requirements of the FOIA and the applicable Exemption 3 of the FOIA as set out in § 286.25(c) statute(s).

(ii) Contact the FOIA requester advising him or her that the Component is asking the DA&M to exempt information responsive to his or her FOIA request. The FOIA requester will be provided with an opportunity to provide a statement to the DA&M detailing the public interest in the release of the information. The FOIA requester also will be advised that this statement will be made available to the public (without personally identifying information such as a home mailing address) as part of the requirement to make publicly available the statement of the basis for the determination.

(iii) Prepare all documentation for review by selected OSD Components and the Office of the General Counsel of the Department of Defense (OGC, DoD). The package will be returned to the Component for further processing and resubmission should any deficiencies be identified.

(iv) Upon complete review, forward the package to the DA&M for determination.

(3) After the DA&M determination is made, DFOIPO will provide it to the DoD Component and post it, along with a statement of the basis for determination, on its Web site. The DoD Component will then deny the information determined to be exempt by the DA&M by providing a copy of the determination to the FOIA requester, advising the FOIA requester of the DoD Component's IDA (the DA&M should not be indicated as the IDA), and advising the FOIA requester of the right to appeal to the DoD Component's appellate authority.

§ 286.29 Initial determinations.

(a) *Denials of information.* (1) The determination whether to withhold information responsive to a FOIA request must be made by an IDA. In designating IDAs, the DoD Component will balance the goals of centralization of authority to promote uniform decisions, and of decentralization to facilitate responding to each FOIA request within the time limitations of the FOIA. The IDA will review all withheld information to determine whether it meets the criteria for withholding pursuant to one or more of the FOIA exemptions. This determination may be made upon the recommendation of a review official.

(2) IDAs and review officials will not use the existence of classification markings or distribution limiting statements, such as ''For Official Use Only'' markings, as justification to withhold information. Information so marked must be reviewed after the receipt of a FOIA request to determine if a FOIA exemption allows the withholding of the information.

(3) To deny information in a requested record that is in the possession and control of the DoD Component, the IDA must determine that one or more of the FOIA exemptions justify withholding all or part of the record.

(4) The IDA should consult with PAOs to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of FOIA requests from news media representatives. The IDA also should inform PAOs in advance when they intend to withhold or partially withhold a record if it appears the withholding action may be a media issue.

(b) *Reasons for denying a FOIA request other than exemptions.* The following are reasons, other than using one or more exemptions, for denying a FOIA request. The DoD Components will track each reason in its control system database for ease of retrieval and reporting in the Annual FOIA Report.

(1) *Partial or total denial.* The record is denied in whole or in part in accordance with procedures set forth in the FOIA. A Glomar response (see § 286.12(e)) is a total denial.

(2) *No records.* A reasonable search of files failed to identify responsive records or where no search is

undertaken because the DoD Component determines that no records responsive to the request would be located.

(3) *Referrals.* All responsive records have been transferred to another DoD Component or federal agency.

(4) *Request withdrawn.* The FOIA request is withdrawn by the FOIA requester.

(5) *Fee-related reason.* The FOIA requester is unwilling to pay fees associated with a FOIA request; the FOIA requester is past due in the payment of fees from a previous FOIA request; or the FOIA requester disagrees with the fee estimate.

(6) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(7) *Not a proper FOIA request for some other reason.* The FOIA requester has failed unreasonably to comply with procedural requirements, other than fee-related requirements, imposed by this part or by DoD Component supplementing regulations. This would include not having a return mailing address.

(8) *Not an agency record.* The information requested is not a record within the meaning of the FOIA and this part.

(9) *Duplicate request.* The FOIA request is a duplicate request (e.g., a FOIA requester asks for the same information more than once). This includes identical requests received from the same requester for the same information through different means (e.g., email, facsimile, mail, courier) at the same or different times.

(10) *Other.* Any other reason why requested records are not provided other than those outlined in paragraphs (b)(1) through (9) of this section. The reasons the DoD Components will use are:

(i) Misdirected request.

(ii) *Records publicly available.* Records are available on a U.S. government Internet Web site (for FOIA requesters with Internet access) or at some other government agency (e.g., the Government Printing Office or the National Technical Information Service).

(iii) *Litigation.* The FOIA request is administratively closed because the FOIA requester has filed a complaint in federal court. If this is the case, the DoD Component FOIA Requester Service Center should consult legal counsel to determine whether they should continue processing the FOIA request.

(iv) *Administrative.* The FOIA request is closed for any reason not covered by this subsection (e.g. the FOIA requester moves and leave no forwarding address). The DoD Components should use this reason in very few cases.

(c) *Responding to FOIA requesters.* All correspondence with FOIA requesters must include the FOIA request tracking number.

(1) When a decision is made to release a record, a copy should be made available promptly to the FOIA requester.

(2) When a FOIA request for a record is denied in whole or in part, the official designated to respond will provide the FOIA requester in writing an explanation of the substantive basis for denial, including specific citation of the statutory exemption applied (e.g., section (b)(1) of the FOIA), a brief explanation of the exemption, why it is being used to withhold information, and the address where the appeal should be mailed. The basis for the determination will be in sufficient detail to permit the FOIA requester to make a decision concerning an appeal. If the IDA does not sign the response letter, the name and duty title of the IDA must be specified in the letter. The official also will advise the FOIA requester that any appeal to the adverse determination must be postmarked no later than 30 calendar days after the date of the initial denial letter.

(3) The DoD Component will make a reasonable effort to estimate the volume of the records denied in their entirety and provide this estimate to the FOIA requester, unless providing such an estimate would harm an interest protected by a FOIA exemption. This estimate should be in number of pages or in some other reasonable form of estimation.

(4) When a denial is based on a statute qualifying as a FOIA Exemption 3 of the FOIA as set out in § 286.25(c) statute, the DoD Components must state the particular statute relied upon to deny the information along with a short description of the statute.

(5) When a FOIA requester is assessed fees for processing a FOIA request, the FOIA requester's fee category will be specified in the final response letter. The DoD Components also will provide the FOIA requester with a complete cost breakdown (e.g., 15 pages of office reproduction at $0.15 per page; 3 hours of professional level search at $56.00 per hour) in the response letter.

(d) *Providing documents to FOIA requesters.* This paragraph (d) applies when a FOIA requester is provided with documents in which some information is withheld.

(1) Although portions of some records may be denied, the remaining reasonably segregable non-exempt portions must be released to the FOIA requester. The DoD Components are encouraged to use onscreen electronic redaction capabilities when redacting documents. If a DoD Component does not have this capability, it must not use black magic markers for document redaction because their use does not adequately block the exempt information. Acceptable manual methods of redaction include black or white tape that completely blocks out the information below it or manually cutting the exempt information out of a copy of the responsive document. The last step when using a manual redaction method is making a photocopy of the final product to verify that all exempt information is deleted.

(2) The amount of deleted information must be indicated on the released portion of paper records, or electronic copies of paper records, by use of brackets or darkened areas. In no case will the deleted areas be left ''white'' without the use of brackets to show the bounds of deleted information. In the case of electronic deletion or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information will be indicated at the place in the record such deletion was made.

(3) When a DoD Component withholds information within a partially releasable document, the exemption pursuant to which a withholding is made must be indicated on the document. This marking of the exemption will be located within the redacted portion or next to it. Figures 1, 2, and 3 of this section demonstrate several possible approaches to marking documents to specify the exemption being asserted.

(4) An exception to this requirement to indicate the amount and location of redacted information pertains to those instances when revealing the amount and location of the redacted information would harm an interest protected by the asserted exemption(s). This exception includes the situation in which revealing the exemption itself on the face of the released-in-part document would harm an interest protected by the exemption. In such rare circumstances, the DoD Components need not indicate the exemption used on the released document.

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Figure 1. Indicating Exemptions When Part of a Paragraph Is Withheld

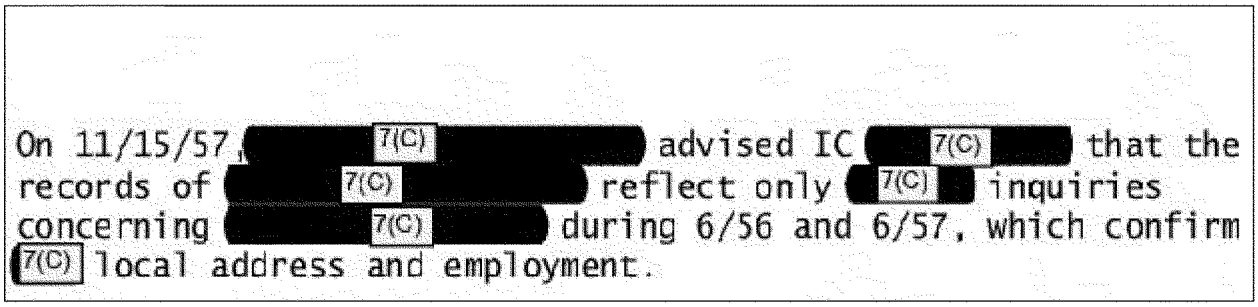


Figure 2. Indicating Exemptions When an Entire Paragraph Is Withheld

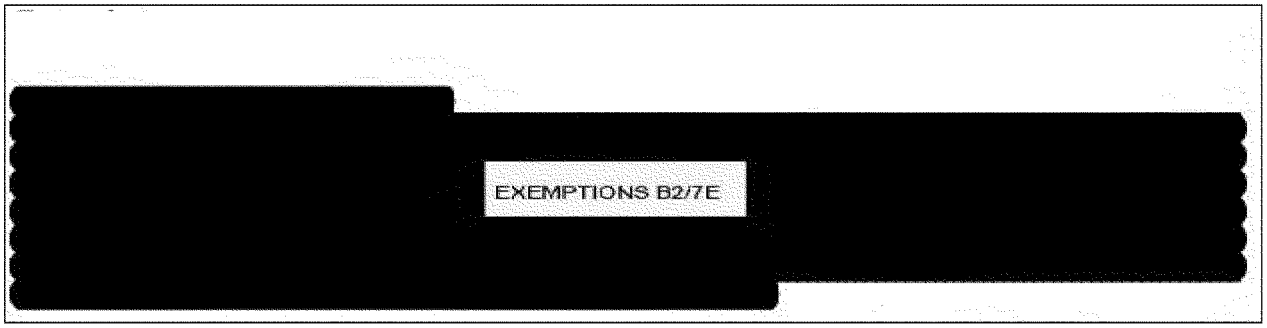
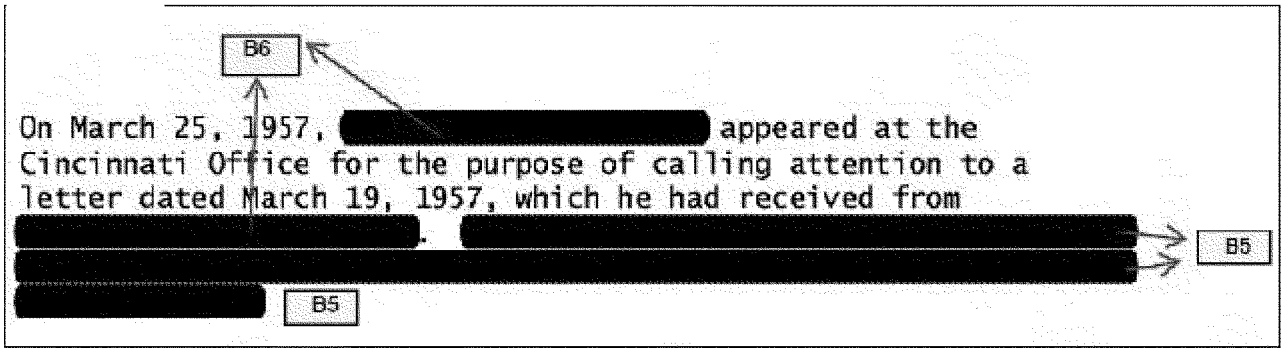


Figure 3. Using Arrows or Lines to Indicate the Exemptions Used



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(e) *Commercial delivery services.* A commercial delivery service may be used if FOIA requester asks for the service to receive the requested information in a timelier manner and the FOIA requester pays directly for the service.

§ 286.30 Referrals and consultations.

Referral and consultation procedures are based upon the concept that the originators of information within a record must make release determinations on that information.

(a) *Referrals.* (1) DoD Components locating responsive documents originating with another DoD Component or agency outside the DoD will refer the documents, along with a copy of the FOIA request, to the originator for response directly to the FOIA requester. The DoD Components referring FOIA requests will include point of contact's name, telephone number, and an email address in the cover memorandum.

(2) If the DoD Component locating the record has an equity interest in the document, it will provide an opinion on its releasability with the referral. The name and duty title of the IDA responsible for the decision to withhold the information will be provided.

(3) Referrals of records will not be made to non-federal agency entities (e.g., a city government). In these cases, the non-federal agency entity may be consulted for a release recommendation (e.g., a foreign government or international organization (see paragraph § 286.28 (e)(2)); however, response to the FOIA requester remains the responsibility of the DoD Component locating the record.

(4) The standard referral procedure is not appropriate where disclosure of the identity of the DoD Component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy and national security interests. For example, if a non-law enforcement DoD Component responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a DoD Component locates material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In all instances when records originating with a law enforcement or Intelligence Community agency are located, in order to avoid harm to an interest protected by an applicable exemption, the DoD Component locating the records should contact the originating DoD component or agency to seek its views on the disclosability of the records. The originating DoD Component or agency will then direct the DoD Component locating the records on the procedures that should be followed. These procedures may involve referring the records or conveying the release determination of the originating entity without attribution.

(5) DoD Components will inform FOIA requesters of all referrals except in the instances described in § 286.30(a)(3). DoD Components receiving referrals will advise FOIA requesters of the date of receipt, the tracking number for the FOIA request, and contact information on how the FOIA requester can obtain information about the processing of the FOIA request.

(6) An exception to this process is when a DoD Component locates responsive records that it created solely for the use of another DoD Component or agency, and it has no objections to their release. The originating DoD Component will refer the record to the other DoD Component or agency for a release determination and direct response to the FOIA requester, who will be notified of the referral. An common example of this exception is contract audits created by the Defense Contract Audit Agency for another DoD Component.

(b) *Consultations.* When a DoD Component locates a responsive record that it originated and determines that another DoD Component or an agency outside the Department of Defense has an interest or equity in the record, the DoD Component must consult with the other entity and obtain its release recommendation. The consulted entity will provide its release recommendation back to the originating DoD Component, which will then respond to the FOIA requester. The FOIA requester should not be advised of this consultation unless information is withheld by the consulted agency. DoD Components seeking a release determination by consulting with another agency will keep the FOIA request open until it responds to the FOIA requester.

(c) *Processing tracks.* The DoD Components that receive referrals or consultations must process them in their multi-track processing systems, based upon the date of initial receipt of the perfected FOIA request by the government.

(d) *White House information.* DoD Components locating records originating with the National Security Staff (NSS), the White House, or the White House Military Office (WHMO), or containing information that these agencies would have an equity interest, will forward the records to OFOI, which serves as the OSD/Joint Staff FOIA Requester Service Center. (See Appendix A to this part for the OSD/Joint Staff FOIA Requester Service Center address.) OFOI will coordinate with NSS, the White House, or WHMO and return the records to the originating agency after coordination for response to the FOIA requester.

(e) *Government Accountability Office (GAO) information.* The GAO is outside the Executive Branch and not subject to the FOIA. FOIA requests for GAO documents within DoD files will be processed pursuant to the FOIA. If necessary, the DoD Components will consult with the GAO on the releasability of the requested information. The final response will be made by the DoD Component.

§ 286.31 Appeals.

(a) *General.* When an IDA makes an adverse determination, the DoD Components must advise the FOIA requester that the decision may be appealed in writing to a designated appellate authority. The DoD Components will further advise the FOIA requester that copies of the initial FOIA request and the denial letter should be submitted with the appeal.

(b) *FOIA and Privacy Act appeals.* When denials have been made pursuant to the Privacy Act and the FOIA, and the denied information is in a Privacy Act system of records, appeals will be processed pursuant to the Privacy Act and the FOIA. If the denied information is not maintained in a Privacy Act system of records, the appeal will be processed pursuant to the FOIA.

(c) *Time of receipt.* A FOIA appeal has been received by the DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred to the proper appellate authority.

(d) *Time Limits.* (1) If the FOIA requester submits an appeal after the conclusion of the 30-day time period established by the date of the initial denial letter, the appeal may be considered untimely and closed for that reason. However, the DoD Components may make exceptions on a case-by-case basis. When a FOIA requester is provided several incremental determinations for a single FOIA request, the 30-day time period for the appeal will not begin until the date of the final response.

(2) Final determinations on appeals should be made within 20 working days after receipt. When the DoD Component has a significant number of appeals preventing a response determination within 20 working days, the appeals must be processed in a multi-track system based at a minimum on the three processing tracks established for initial FOIA requests according to § 286.29.

(e) *Delay in responding to an appeal.* If a determination cannot be made within 20 working days, the appellate authority or the appellate authority's representative will acknowledge to the FOIA requester, in writing, the date of receipt of the appeal and the circumstances surrounding the delay.

(f) *Response to FOIA requester.* (1) When an appellate authority makes a final determination to release all or portions of records withheld by an IDA, a written response and a copy of the records so released will be forwarded promptly to the FOIA requester. If the FOIA requester owes outstanding fees from the initial FOIA request, and these fees were not appealed, the appellate authority will advise the FOIA requester that the appeal will be administratively closed until the owed fees are received. The final appellate response will not be made until the fees are paid.

(2) Final denial of an appeal must be made in writing and signed by the appellate authority. The response must include:

(i) The basis for the denial, to include an explanation of the applicable statutory exemption or exemptions invoked pursuant to the FOIA, and of

other appeal matters set forth in § 286.19.

(ii) A determination that the denied information meets the cited criteria and rationale of the governing Executive order if the final refusal is based in whole or in part on Exemption 1 of the FOIA as set out in § 286.25(a).

(iii) A statement that the information being denied does not contain meaningful portions that are reasonably segregable in the case of appeals for total denial of records.

(iv) The FOIA requester's right to judicial review.

(3) The appeal is closed with the final appellate response.

(g) *Consultation with the Office of the General Counsel (OGC), DoD.* (1) Final denial of access involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with OGC, DoD.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other government agencies must be discussed with OGC, DoD.

§ 286.32 FOIA litigation.

(a) *General.* FOIA requesters may seek an order from a U.S. District Court to compel release of information after administrative remedies have been exhausted; e.g., when the FOIA requester has filed an administrative appeal of an adverse action, or when the DoD Component has failed to respond within the time limits prescribed by the FOIA. The U.S. Department of Justice, ''Freedom of Information Act Guide'' provides more detailed guidance on FOIA litigation.

(1) If a DoD Component is served a complaint for a FOIA request that is still open, the DoD Component will administratively close the FOIA request.

(2) FOIA officers should confer with legal counsel or Department of Justice attorneys on whether administrative processing should continue and whether it is appropriate to communicate directly with the FOIA requester or requester's counsel.

(b) *Non-government source information (commercial and financial information withheld pursuant to Exemption 4* of the FOIA as set out in *§ 286.25(d)).* A FOIA requester may bring suit in a U.S. District Court to compel the release of records obtained from a submitter or records based on information obtained from a submitter. The submitter must be notified promptly of the court action pursuant to Executive Order 12600.

(c) *FOIA litigation notification.* DoD Components served directly with a complaint is filed in a U.S. District Court pursuant to the FOIA will immediately forward copies of the complaint to OGC, DoD and DFOIPO.

Subpart F—Fee Schedule

§ 286.33 General provisions.

(a) *Application.* (1) The fees described in this section apply to FOIA requests submitted pursuant to 32 CFR part 285, and conform to the **Federal Register**, Volume 52, pages 10012–10020.

(2) The fees are not meant to substitute for any other charges established by the Department of Defense, such as Volume 11a of DoD 7000.14–R (available at *http://www.defenselink.mil/comptroller/fmr/*), to recoup direct costs of authorized services provided by the DoD Components that are not FOIA related.

(3) This section does not supersede fees chargeable pursuant to a statute specifically providing for setting the level of fees for particular types of records, such as the Government Printing Office, the National Technical Information Service, or the Defense Logistics Information Service. The DoD Components will inform FOIA requesters of the steps necessary to obtain records from those sources if they are requested.

(b) *Fee assessment.* (1) Fees may not be used to discourage FOIA requesters. Assessable FOIA fees are limited to standard charges for direct search, review (in the case of commercial requesters), and duplication.

(2) Fees are assessed based on the category determined to be appropriate for the FOIA requester's status. The fee status of a FOIA requester who is an attorney representing a client is determined by the fee status of the attorney's client. If the fee status of the client is not clear, then the DoD Components should ask the FOIA requester for clarification. The attorney does not need to reveal the identity of the client, only the client's fee status. If the attorney does not provide enough information to determine the fee status, then the DoD Component may assign commercial fee status to the FOIA requester.

(3) FOIA requests should contain a willingness to pay fees appropriate to that category. The DoD Components will not require a willingness to pay fees if it is determined before processing, based on what is requested and the FOIA requester's fee category, that fees will not be assessed. In those instances where a FOIA requester asks for a fee waiver, in order to facilitate the processing of the request FOIA requesters are encouraged to provide a willingness to pay fees in the event the fee waiver is denied. This commitment does not impact the FOIA requester's right to file an appeal concerning the fee waiver denial. The categories are:

(i) *Commercial use.* FOIA requesters should indicate a willingness to pay all search, review, and duplication costs when the records are requested for commercial use. Commercial requesters are not entitled to 2 hours of free search time and 100 free pages of reproduction.

(A) In determining whether a FOIA requester properly belongs in this category, the DoD Components must determine how a FOIA requester will use the documents requested. When a DoD Component has reasonable cause to doubt the use of the records sought, or when that use is not clear from the FOIA request itself, the Component should seek additional clarification from the FOIA requester before assigning the FOIA request to a specific category.

(B) Commercial requesters are not entitled to a waiver or reduction of fees based on an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criterion, it is possible that a commercial enterprise may make a FOIA request that is not for commercial use. It is also possible that a non-profit organization or a representative of the news media could make a FOIA request that is for commercial use (e.g., a magazine publisher asking for duty addresses of DoD personnel to solicit them to buy subscriptions to the magazine). Such situations must be addressed on a case-by-case basis.

(ii) *Educational, noncommercial scientific institution, or news media.* FOIA requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(A) *Educational institution.* Fees are limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the FOIA request is made by an educational institution whose purpose is scholarly research. Fees are waived or reduced in the public interest if the fee waiver criteria are met. A FOIA request made by a faculty or staff member or a student of an educational institution that serves an individual research goal and not a scholarly research goal of the institution would not qualify for this fee category. For example, a FOIA request from a student or faculty member of a law school for records related to a person that the school is also representing in court

would not qualify as a FOIA request from an educational institution.

(B) *Non-commercial scientific institution.* Fees are limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the FOIA request is made by a non-commercial scientific institution whose purpose is scientific research. Fees are waived or reduced in the public interest if the fee waiver criteria are met.

(C) *Representatives of the news media.* Fees are limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Fees are waived or reduced if the fee waiver criteria are met.

(*1*) Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services and the Internet), the DoD Components will include such alternative media in this category.

(*2*) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the DoD Components may also look to the past publication record of a FOIA requester in making this determination.

(*3*) Representatives of the news media do not include private libraries, private repositories of government records, information vendors, data brokers, or similar marketers of information, whether to industries and businesses or other entities.

(*4*) A person or entity that merely disseminates documents received pursuant to the FOIA to an audience would not qualify as a representative of the news media because, in this case, the person or entity is not using editorial skills to turn raw materials into a distinct work. Additionally, applying a label such as ''reporter'' to a person on staff of an organization that not otherwise meet the definition of a representative of the news media does not create media status for FOIA purposes.

(iii) *All others.* FOIA requesters who do not fit into any of the previous categories should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are required. Fees are waived or reduced if the fee waiver criteria are met.

(4) The fee provisions of 32 CFR part 310 apply when FOIA requesters ask for information about themselves pursuant to the Privacy Act. In these cases, the only assessable processing fees are for duplication.

(5) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, the DoD Components will analyze each FOIA request to determine the category of the FOIA requester. If the DoD Component determination regarding the category of the FOIA requester is different than that claimed, the Component must:

(i) Notify the FOIA requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not begin until an agreement has been attained relative to the category of the FOIA requester and the FOIA requester indicates a willingness to pay assessable costs appropriate for the category determined by the DoD Component. The statutory time limit will be tolled with this notification and will not continue until the DoD Component receives a response from the FOIA requester.

(ii) Absent further category justification from the FOIA requester and within a reasonable period of time, render a final category determination and notify the FOIA requester of such determination, to include administrative appeal rights of the determination.

(6) The DoD Components must be prepared to provide an estimate of assessable fees if desired by the FOIA requester. While it is recognized that search situations will vary among the DoD Components and that an estimate is often difficult to obtain prior to an actual search, FOIA requesters who desire estimates are entitled to such before committing to a willingness to pay.

(i) If determining a fee estimate involves searching for responsive documents, the time to conduct the search is considered ''search'' time for fee assessment purposes.

(ii) Should the DoD Components' actual costs exceed the amount of the estimate or the amount agreed to by the FOIA requester, the amount in excess of the estimate or the requester's agreed amount will not be charged without the FOIA requester's agreement.

(7) The DoD Components usually will not require advance payment of any fee (i.e., payment before work is started or continued on a FOIA request). The DoD Components may require advance payment if:

(i) The FOIA requester has a history of failing to pay fees in a timely fashion (within 30 days of the billing date) on a previous FOIA request; or

(ii) The DoD Component determines that the fee will exceed $250.

(8) When the DoD Component estimates that allowable charges for a FOIA request may exceed $250, the DoD Component will notify the FOIA requester of the likely cost and obtain a satisfactory assurance of full payment. The DoD Component may ask for an advance payment of an amount up to the full estimated charges for FOIA requesters with no history of payment or a history of late payments.

(9) When a FOIA requester has an outstanding overdue debt with any DoD Component or federal agency, the DoD Component may administratively close all the FOIA requester's requests after giving notice to the FOIA requester. The FOIA requester will be advised that any administratively closed requests may be resubmitted once the full amount owed, plus any applicable interest, is paid. Interest will be at the rate prescribed in 31 U.S.C. 3717 (also known and referred to in this part as the ''Debt Collection Act of 1982''), and confirmed with the applicable finance and accounting offices.

(10) When the DoD Components dispute a requester's fee category assertion, the administrative time limits of the FOIA will begin only after the DoD Component has received a confirmation of willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(11) The DoD Components may charge for time spent searching for records, even if that search fails to locate records responsive to the FOIA request. The DoD Components may also charge search and review time (in the case of commercial requesters) even if the records located are determined to be exempt from disclosure.

(12) If the DoD Component estimates that processing charges are likely to exceed what the FOIA requester is willing to pay, it will notify the FOIA requester of the estimate of fees broken down by search, review, and duplication. This notice will offer the FOIA requester the opportunity to confer with DoD Component personnel with the object of reformulating the FOIA request to meet his or her needs at a lower cost. The FOIA request is not perfected until a confirmation of willingness to pay all assessable fees is received.

(13) The DoD Components may establish a minimum willingness to pay fee estimates for commercial requesters seeking contract-related documents. Such estimates will be the average of the previous three fiscal years of actual fees charged to commercial requesters seeking contract-related documents for the DoD Component, and will be revised annually. The DoD Components will notify the public of the minimum fee estimate by publishing it within its FOIA issuances or on DoD Component FOIA Requester Service Center Internet Web sites. FOIA requests from commercial requesters seeking contract-related documents not containing a willingness to pay fee agreement equal to or greater than the minimum estimated amount will not be considered perfected for fee-related reasons.

(14) DoD FOIA Components will track and assess, if appropriate, hourly processing fees for human activity involving search, review, and other activity, in accordance with the rates in Table 1 of this section.

TABLE 1—FOIA HOURLY PROCESSING FEES

Type	Grade	Hourly rate
Administrative	E–9 and GS–8 and below	$28
Professional	Contractor/O–1 to O–6/GS–9 to GS–15	56
Executive	O–7 and above and Senior Executive Service	112

(15) Search fee assessments would include manual and electronic searches. Electronic searches, which include any time spent on a computer to conduct a search (including electronic files of documents and database files) would include:

(i) Time spent by a person to create a query or program to conduct an electronic search, including the extraction of specific fields out of a database.

(ii) Time spent by a person to search servers or hard drives using a keyword or other search method.

(iii) Time spent by a person to review documents located during an electronic search to determine if they are responsive.

(16) A DoD Component will not pass on to FOIA requesters any costs of purchasing or maintaining information technology computers if these computers are used in the normal operation of the DoD Component.

(17) The DoD assessable fee for document reproduction is $0.15 per page. This fee applies only to paper copies of documents provided to FOIA requesters. DoD Components will not assess a document reproduction fee when providing electronic copies of responsive documents to FOIA requesters unless the creation of the electronic copies requires unique security procedures incurring considerable operator time, costing more than printing paper copies. In these cases, assessable fees are computed by taking the operator time to create the product times the rate in Table 1 of this section.

(18) When the duplication of responsive documents involves duplicating audiovisual materials (e.g., creating a digital video disk (DVD)), assessable fees are computed by taking the operator time to duplicate the product times the rate in Table 1 of this section. Audiovisual materials provided to a FOIA requester need not be in reproducible format or quality. Since the cost of audiovisual materials such as DVDs are small, the DoD Components will not charge for the use of this media, except as provided in Table 2 of this section for technical data.

TABLE 2—FOIA DOCUMENT PRODUCTION FEES—TECHNICAL DATA

Type	Cost
Aerial Photographs, Specifications, Permits, Charts, Diagrams, Technical Drawings, Blueprints, and Other Technical Documents (per page or copy)	$2.50
Engineering Data:	3.00
	3.50
Aperture Cards, per card	1.00
Silver Duplicate Negative	3.50
When Keypunched and Verified	3.00
Diazo Duplicate Negative	1.00
When Keypunched and Verified	0.65
35 mm Roll Film, per frame	0.30
16 mm Roll Film, per frame	0.10
Paper Prints (engineering drawings), each (per square foot)	
Paper Reprints of Microfilm Images, each	
Other Technical Data Records:	
Paper Copy (standard size paper up to 8 1/2 × 14, photocopier or printer)	0.15
CD/DVD	5.00
Microfiche Produced, each	3.50
Certification and Validation with Seal, each document	50.00

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the total assessable fees are less than or equal to $25.

(2) When the DoD Components fails to comply with the 20-day statutory time limit and no unusual or exceptional circumstances apply, they may not assess search and duplication fees for ''all other'' requesters or duplications fees for FOIA requests from educational, noncommercial scientific institutions or representatives of the news media. (See § 286.3 for an explanation of unusual and exceptional circumstances.) When the DoD Components determine a FOIA requester must still pay all assessable fees because unusual or exceptional

circumstances exist, the FOIA requester will be advised of this as early as possible during the processing of the FOIA request.

(3) The DoD Components will not charge more than one FOIA requester for the search and review of the same documents. When two or more requesters ask for the same documents, only the FOIA requester whose FOIA request was first received by the DoD Component can be assessed for search or review fees. All FOIA requesters can be assessed duplication fees. If the first FOIA requester is not assessed search or review fees due to fee status, those fees cannot be passed on to any later FOIA requesters.

(4) FOIA requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to this only once per FOIA request.

(5) When duplication involves the creation of audiovisual material or considerable operator time in the creation of CDs, in the case of non-commercial requesters the monetary equivalent of the first 100 free pages is subtracted from the actual computed cost of duplication (see Table 2 of this section). For example, if the total actual duplication cost of a DVD is $75, the FOIA requester is charged only the amount above $15 (the first 100 free pages times the paper duplication rate of $0.15 in Table 2). In this case, that would be $60.

(d) *Fee waivers.* (1) Documents will be furnished without charge, or at a reduced charge, when the DoD Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of DoD operations or activities and is not primarily in the commercial interest of the FOIA requester. Decisions to waive or reduce fees that exceed the minimum chargeable fee established in paragraph (b)(1) of this section will be made by the DoD Component on a case-by-case basis and after a search for responsive records is completed, consistent with these factors:

(i) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The factors identified in paragraphs (d)(1)(i)(A) through (D) of this section must be met to some degree to warrant waiving or reducing assessable fees in the public interest.

(A) *Subject of the FOIA request.* The DoD Components should analyze whether the subject matter of the FOIA request involves issues that will significantly contribute to the public understanding of DoD operations or activities.

(*1*) FOIA requests for records in DoD possession that were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of DoD operations or activities. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity.

(*2*) Similarly, disclosures of records of considerable age may or may not bear directly on current DoD activities; however, the age of a particular record will not be the sole criterion for denying relative significance consistent with this factor. For instance, an informative issue concerning current DoD activities may be based on historical documentation. FOIA requests of this nature must be closely reviewed consistent with the FOIA requester's stated purpose for desiring the records and the potential for public understanding of DoD operations and activities.

(B) *Informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful and will inform the public on DoD operations or activities. While the subject of a FOIA request may contain information that concerns the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of its operations or activities. Examples include:

(*1*) A heavily redacted record previously released, containing only random words, fragmented sentences, or paragraph headings.

(*2*) Identical or nearly identical record in the public domain.

(C) *Contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform, the public rather than simply the individual FOIA requester or a small segment of interested persons. The identity of the FOIA requester is essential in this situation in order to determine whether such FOIA requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, research a particular subject, complete doctoral dissertation work, or claims of indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. FOIA requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *Significance of the contribution to public understanding.* In applying this factor, the DoD Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge or understanding that exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. The DoD Components must not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information is not primarily in the commercial interest of the FOIA requester. Determining commercial interest requires consideration of two basic issues:

(A) *Existence and magnitude of a commercial interest.* If the FOIA request is determined to be of a commercial interest, the DoD Components should address the magnitude of that interest to determine if the FOIA requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in requesting records. When it is difficult to determine whether the FOIA requester is of a commercial nature, the DoD Components may draw inference from the FOIA requester's identity and circumstances of the FOIA request.

(B) *Primary interest in disclosure.* Once a FOIA requester's commercial interest has been determined, the DoD Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interests of the FOIA request against any public benefit to be derived as a result of that disclosure.

(*1*) When the public interest is served above and beyond that of the FOIA requester's commercial interest, a waiver or reduction of fees would be appropriate.

(*2*) Conversely, even if a significant public interest exists, and the relative commercial interest of the FOIA requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate.

(*3*) As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly or indirectly (through the institution they represent); however, usually such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can be presumed to have an interest primarily of a commercial nature.

(2) The factors and examples used in paragraph (d)(1) of this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each FOIA request. When there is an element of doubt as to whether to charge or waive the fee, the DoD Components should rule in favor of the FOIA requester.

(3) The DoD Components will consider these additional circumstances where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g., $25 to $50).

(e) *Aggregating FOIA requests.* When a DoD Component reasonably believes that a FOIA requester or, on rare occasions, a group of FOIA requesters acting in concert, is attempting to break a FOIA request down into a series of requests to avoid the assessment of fees, the DoD Component may aggregate any such FOIA requests and charge accordingly. Another example would be if a FOIA requester considered ''other'' for fee purposes files multiple FOIA requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees.

(1) One element to be considered in determining whether this belief would be reasonable is the time period when the FOIA requests are made. For example, it would be reasonable to presume that multiple FOIA requests of this type made within a 30-day period are made to avoid fees. For FOIA requests made over a longer period, however, such a presumption becomes harder to sustain and the DoD Components must have a solid basis for determining that aggregation is warranted in such cases.

(2) Before aggregating FOIA requests from more than one FOIA requester, the DoD Components must have a basis to conclude that the FOIA requesters are acting in concert and are acting specifically to avoid payment of fees.

(3) The DoD Components will not aggregate multiple FOIA requests on unrelated subjects from one FOIA requester.

(f) *Effect of the Debt Collection Act of 1982.* The Debt Collection Act of 1982 provides for a minimum annual rate of interest to be charged on overdue debts owed the U.S. government. The DoD Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the FOIA requester of the amount owed. The interest rate will be as prescribed in Volume 11A of DoD 7000.14–R. The DoD Components should verify the current interest rate with their respective finance and accounting offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, the DoD Components may submit the debt to their respective finance and accounting offices for collection pursuant to the Debt Collection Act of 1982.

(g) *Computation of fees.* The fee schedules in Tables 1 and 2 of this section will be used to compute the assessable fees based on the time actually spent on the search, review (in the case of commercial requesters), and duplication costs associated with processing a given FOIA request. Neither time-based nor dollar-based minimum charges for search, review, and duplication are authorized. The appropriate fee category of the FOIA requester must be determined before computing fees. All time computations will be to the nearest 15 minutes.

(1) The DoD Components will track processing costs for each FOIA request on DD Form 2086, ''Record of Freedom of Information (FOI) Processing Cost,'' or by using DD Form 2086–2, ''Freedom of Information (FOI) Consultation and Request Summary'' (available at *http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm*).

(2) DD Form 2086–2 is designed to capture additional data to facilitate the production of the Annual FOIA Report. It is best suited for FOIA Requester Service Centers without an automated accounting system.

(h) *Refunds.* When a DoD Component discovers that it has overcharged a FOIA requester or that a FOIA requester has overpaid, the DoD Component will promptly refund the charge to the FOIA requester by reimbursement methods that are agreeable to the FOIA requester and the Component.

(i) *Collection of fees.* The DoD Components will advise FOIA requesters of assessable fees and provide instructions on fee payment with the final determination. The DoD Components will coordinate with their servicing finance offices to ensure they are employing proper collection procedures.

(j) *Other records.* Direct search and duplication cost for any record not described in paragraph (b) of this section will be computed in the manner described for audiovisual documentary material.

(k) *Costs for Special Services.* Complying with FOIA requests for special services is at the discretion of the DoD Components. Neither the FOIA nor its fee structure covers these kinds of services. Therefore, the DoD Components may recover the costs of special services after a FOIA requester agrees in writing from the FOIA requester to pay for any of these services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail.

(3) Creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file.

§ 286.34 Fees for technical data.

(a) Technical data may be graphic or pictorial delineations in media, such as drawings or photographs, text in specification or related performance or design-type documents, or computer printouts. Examples of technical data include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information and computer software documentation.

(b) Unless technical data qualifies for withholding from public release pursuant to one or more of the FOIA exemptions, it will be released to the FOIA requester after all reasonable costs are paid as authorized by 10 U.S.C. 2328.

(1) All reasonable costs are the full costs to the government for rendering the service, as reflected on DD Form 2086–1, ''Record of Freedom of Information (FOI) Processing Cost for Technical Data'' (available at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2086-1.pdf*).

(2) The DoD Components will retain the amounts received by such a release, and will merge it with and make it available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with the FOIA request.

(3) For personnel rates, see Table 1 of § 286.33.

(4) For document production fees, see Table 2 of § 286.33.

(c) The DoD Components will waive the payment of costs required in paragraph (b) of this section that are greater than the costs that would be required for release of this same information consistent with paragraph (b) of this section if:

(1) The FOIA request is made by a U.S. citizen or a U.S. corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or to determine whether it is capable of submitting an offer, to provide the product to which the technical data relates to the United States or a U.S. contractor. However, the DoD Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the FOIA request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or

(3) The DoD Component determines, in accordance with paragraph (c) of this section that such a waiver is in the interest of the United States.

§ 286.35 Fees for research data.

Research data that is obtained by the DoD Component from a grant recipient solely in response to a FOIA request may charge the FOIA requester a reasonable fee equaling the full incremental cost of obtaining the research data. The fee should reflect costs incurred by the DoD Component, grant recipient, and sub-recipients. This fee is in addition to any fees the DoD Component may assess pursuant to the FOIA.

Subpart G—Education and Training

§ 286.36 Purpose.

The purpose of the DoD FOIA educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program. Fulfilling this purpose will improve customer service to members of the public and improve the public trust in the Department of Defense.

§ 286.37 Responsibility.

Each DoD Component establishes educational and training programs on the provisions and requirements of this part. These programs will develop a general understanding and appreciation of the DoD FOIA Program in all DoD Component personnel. The training programs will provide personnel involved in the day-to-day processing of FOIA requests with a thorough understanding of the procedures outlined in this part.

§ 286.38 Scope and principles.

Each DoD Component designs its FOIA educational and training programs to fit the particular requirements of its personnel, dependent upon their degree of involvement in implementing this part. These programs will reach for two target audiences: those personnel who are involved in the day-to-day processing of FOIA requests, and those staff personnel who provide search or review staff-support to the DoD Component FOIA process. The programs will:

(a) Familiarize personnel with the requirements of the FOIA and its implementation by this part and respective DoD Component issuances.

(b) Instruct personnel who act in FOIA matters on the provisions of this part; advise them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(c) Provide procedural and legal guidance and instruction to initial denial and appellate authorities concerning the discharge of their responsibilities.

(d) Emphasize that the processing of FOIA requests must be citizen-centered and results-oriented.

(e) Advise personnel of the penalties for noncompliance with the FOIA.

§ 286.39 Implementation.

To ensure uniformity of interpretation, the DoD Components will coordinate their educational and training programs with DFOIPO.

Appendix A to Part 286—DoD FOIA Program Components and Addresses

(a) *General.* (1) The DoD does not have a central repository for DoD records. FOIA requesters should address FOIA requests to the FOIA Requester Service Center of the DoD Component that has custody of the record desired. DFOIPO maintains a current list of links to FOIA Requester Service Centers at *http://www.dod.mil/pubs/foi/dfoipo/.* FOIA Requesters Service Centers may assume that FOIA requests addressed to their DoD Component are for their component's records only, and they have no obligation to refer the FOIA request to another DoD Component unless it is clearly a misdirected FOIA request (for example, a Navy FOIA Requester Service Center receives a FOIA request for an Air Force contract).

(2) If uncertain as to the ownership of the record, FOIA Requesters Service Centers should contact the OSD/JS FOIA Requester Service Center at 1–866–574–4970, to seek assistance on its ownership. If it still is undetermined, then the FOIA Requester Service Center receiving the request will advise the FOIA requester that they do not have cognizance over the record, and will administratively close the FOIA request.

(b) *DoD Component FOIA Requester Service Center addresses.* Each of these DoD Component heads will serve as, or appoint, an appellate authority in accordance with 32 CFR part 285.

(1) *OSD and the Office of the Chairman of the Joint Chiefs of Staff and Joint Staff.* (i) Address all requests to: OSD/Joint Staff FOIA Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

(ii) The OSD/Joint Staff FOIA Requester Service Center processes FOIA requests for offices, agencies, and activities not listed in this Appendix. Table 1 of this appendix lists other organizations, activities, or offices serviced by the OSD/Joint Staff FOIA Requester Service Center.

TABLE 1—ADDITIONAL ORGANIZATIONS, ACTIVITIES, OR OFFICES SERVICED BY THE OSD/JOINT STAFF FOIA REQUESTER SERVICE CENTER

Criminal Investigation Task Force
Defense Acquisition University
Defense Advanced Research Projects Agency
Defense Equal Opportunity Management Institute
Defense Legal Services Agency
Defense Microelectronics Activity
Defense Media Activity
Defense Prisoner of War/Missing Persons Office
Defense Security Cooperation Agency
Defense Technology Security Administration
Defense Travel Management Office
DoD Human Resources Activity
DoD Test Resources Management Center
Joint Improvised Explosive Device Defeat Organization
Missile Defense Agency

TABLE 1—ADDITIONAL ORGANIZATIONS, ACTIVITIES, OR OFFICES SERVICED BY THE OSD/JOINT STAFF FOIA REQUESTER SERVICE CENTER—Continued

National Defense University
Office of Economic Adjustment
Pentagon Force Protection Agency
Uniform Services University of the Health Sciences
Washington Headquarters Services
White House Military Office

(2) *Department of the Army.* For records from the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records, address FOIA requests to: Department of the Army, Freedom of Information Act Office, ATTN: AAHS–RDF, 7701 Telegraph Road, Suite 144, Alexandria, VA 22315–3905.

(3) *Department of the Navy.* Address FOIA requests to the Commanding Officer of any Navy or U.S. Marine Corps (USMC) activity. Clearly indicate that the request is a FOIA request.

(i) For Secretary of the Navy and Chief of Naval Operations, or if there is uncertainty as to which Navy activity may have the records, send FOIA requests to: Department of the Navy, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

(ii) For Headquarters, USMC Department/Division records, or if there is uncertainty as to which USMC unit may have the records, send FOIA requests to: Commandant of the Marine Corps, 3000 Marine Corps Pentagon, Washington, DC 20380–0001.

(4) *Department of the Air Force.* Address FOIA requests to the Commander of any Air Force installation, major command, or field operating agency to the attention of the FOIA Requester Service Center. For records of the Headquarters, U.S. Air Force, or if there is uncertainty as to which Air Force activity may have the records, send FOIA requests to: Department of the Air Force, ATTN: SAF/AAII (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000.

(5) *Defense Commissary Agency.* Address all FOIA requests to: Defense Commissary Agency, FOIA/Privacy Act Officer, 1300 E. Avenue, Fort Lee, VA 23801–1800.

(6) *Defense Contract Audit Agency (DCAA).* Address FOIA requests to any DCAA regional office or to DCAA Headquarters. For records from Headquarters, DCAA, or if there is uncertainty as to which DCAA region may have the records, send FOIA requests to: Defense Contract Audit Agency, ATTN: CMR, FOIA Requester Service Center, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

(7) *Defense Contract Management Agency (DCMA).* Address FOIA requests to: Defense Contract Management Agency, Building 10500, 3901 A Avenue, Fort Lee, VA 23801.

(8) *Defense Finance and Accounting Service (DFAS).* Address FOIA requests to any DFAS regional office or to Headquarters, DFAS. For records from Headquarters, DFAS, or if there is uncertainty as to which DFAS region may have the records, address FOIA requests to: Defense Finance and Accounting Service, FOIA/PA Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

(9) *Defense Health Agency.* Address requests to: Defense Health Agency FOIA Requester Service Center, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101

(10) *Defense Information Systems Agency (DISA).* DISA records may be requested from any DISA field activity or from its headquarters. For records from Headquarters, DISA, or if there is uncertainty as to which DISA field activity may have the records, address FOIA requests to: Defense Information Systems Agency, ATTN: Headquarters FOIA Requester Service Center, P.O. Box 459, Fort George G. Meade, MD 20755.

(11) *Defense Intelligence Agency.* Address FOIA requests to: Defense Intelligence Agency, ATTN: DIAC, DAN–1A (FOIA), Building 6000, Washington, DC 20340–5100.

(12) *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. For records from Headquarters, DLA, or if there is uncertainty as to which DLA field activity may have the records, address FOIA requests to: Defense Logistics Agency, FOIA Desk Officer, ATTN: DG/FOIA & Privacy Act Team, 8725 John J. Kingman Road, Suite 1644, Ft. Belvoir, VA 22060–6221.

(13) *Defense Security Service.* Address FOIA requests to: Defense Security Service, Office of FOIA and Privacy, 27130 Telegraph Road, Quantico, VA 22134.

(14) *Defense Threat Reduction Agency.* Address FOIA requests to: Defense Threat Reduction Agency, DIR–COSMI–F FOI/Privacy Office, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

(15) *National Geospatial-Intelligence Agency.* Address FOIA requests to: National Geospatial-Intelligence Agency, FOIA Requester Service Center, 7500 GEOINT Drive, MS S71–OGCA, Springfield, VA 22150–7500.

(16) *National Reconnaissance Office.* Address FOIA requests to: National Reconnaissance Office, Information Review and Release Group, ATTN: FOIA Officer, 14675 Lee Road, Chantilly, VA 20151–1715.

(17) *National Security Agency/Central Security Service.* Address FOIA requests to: National Security Agency/Central Security Service, FOIA/PA Services, DJ4, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248.

(18) *Office of the Inspector General of the Department of Defense.* Address FOIA requests to: Inspector General of the Department of Defense, FOIA Requester Service Center/Privacy Act Office, 4800 Mark Center Drive, Suite 17F18, Alexandria, VA 22350–1500.

(c) *DoD Field Activity and Combatant Command addresses.* The FOIA Requester Service Centers listed in this paragraph (c) respond directly to the public on initial FOIA requests; however, the appellate authority is the DA&M. Accordingly, initial FOIA requests should be sent to the addresses indicated.

(1) *Chairman, Armed Services Board of Contract Appeals.* Address FOIA requests to: Chairman, Armed Services Board of Contract Appeals, Skyline Six Room 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

(2) *Defense Technical Information Center.* Address FOIA requests to: Defense Technical Information Center, ATTN: FOIA Program Manager, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22062–6218.

(3) *DoD Education Activity.* Address FOIA requests to: DoD Education Activity, Freedom of Information Act Officer, 4800 Mark Center Drive, Alexandria, VA 22350–1400.

(4) *Joint Personnel Recovery Agency.* Address requests to: Joint Personnel Recovery Agency, ATTN: FOIA Requestor Service Center, 10244 Burbeck Road, Building 358, Fort Belvoir, VA 22060–5805.

(5) *National Guard Bureau.* Address FOIA requests to: National Guard Bureau, Attn: NGB–JA (FOIA), 1411 Jefferson Davis Highway, Suite 11300, Arlington, VA 22202–3231.

(6) *United States Africa Command.* Address FOIA requests to: United States Africa Command, ATTN: FOIA Requester Service Center, Unit 29951, APO AE 09751–9951.

(7) *United States Central Command.* Address FOIA requests to: United States Central Command, CCJ6–RD (FOIA), 7115 South Boundary Boulevard, MacDill Air Force Base, FL 33621–5101.

(8) *United States European Command.* Address FOIA requests to: United States European Command, FOIA Requester Service Center, Unit 30400 Box 1000, APO AE 09131.

(9) *United States Northern Command.* Address FOIA requests to: United States Northern Command, FOIA Requester Service Center, 250 Vandenberg Street, Suite B016, Peterson Air Force Base, CO 80914–3804.

(10) *United States Pacific Command.* Address FOIA requests to: United States Pacific Command, FOIA Requester Service Center, ATTN: J0211, Box 64028, Camp H. M. Smith, HI 96861–4028.

(11) *United States Southern Command.* Address FOIA requests to: HQ USSOUTHCOM, Attn: SCJ224 (FOIA), 9301 NW 33d Street, Doral, FL 33172.

(12) *United States Special Operations Command.* Address FOIA requests to: United States Special Operations Command, SOCS–SJS–I/FOIA Requester Service Center, 7701 Tampa Point Blvd., MacDill Air Force Base, FL 33621–5323.

(13) *United States Strategic Command.* Address FOIA requests to: United States Strategic Command, Attn: J006 (FOIA), 901 SAC Blvd., Suite 1A6, Offutt Air Force Base, NE 68113–6000.

(14) *United States Transportation Command.* Address FOIA requests to: United States Transportation Command, Attn: TCJA–FO, 508 Scott Drive, Building 1961, Scott Air Force Base, IL 62225.

Dated: July 18, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–19747 Filed 9–2–14; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Implementation Plans; California; South Coast 1-Hour and 8-Hour Ozone and Approval of Air Quality Implementation Plan Revisions; State of California; South Coast VMT Emissions Offset Demonstrations; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0185; FRL–9915–86–Region 9]

Approval and Promulgation of Implementation Plans; California; South Coast 1-Hour and 8-Hour Ozone

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the portions of a State implementation plan (SIP) revision submitted by the State of California on February 13, 2013 that relate to attainment of the 1-hour and 1997 8-hour ozone national ambient air quality standards in the Los Angeles-South Coast area. Specifically, the EPA is approving the portions of the South Coast Air Quality Management District's *Final 2012 Air Quality Management Plan* that update the approved control strategy for the 1997 8-hour ozone standard and that provide a demonstration of attainment of the 1-hour ozone standard by December 31, 2022. In approving this SIP revision, the EPA finds that an attainment date of December 31, 2022 is appropriate in light of the severity of the 1-hour ozone problem in the Los Angeles-South Coast area and the limited emissions remaining that can be regulated given the extent to which emissions sources in the South Coast have already been controlled. As part of this action, the EPA is approving new commitments adopted by the South Coast Air Quality Management District to develop, adopt, submit and implement certain near-term measures to achieve certain aggregate emission reduction targets, updated new technology provisions, and a new commitment by the California Air Resources Board to submit contingency measures in 2019 as necessary to meet the emission reduction targets for 2022 from implementation of new technology measures.

DATES: This rule is effective on October 3, 2014.

ADDRESSES: You may inspect the supporting information for this action, identified by docket number EPA–R09–OAR–2014–0185, by one of the following methods:

1. Federal eRulemaking portal, *http://www.regulations.gov,* please follow the online instructions; or,

2. Visit our regional office at, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Docket: The index to the docket for this action is available electronically on the *www.regulations.gov* Web site and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., voluminous records, large maps, copyrighted material), and some may not be publicly available at either location (e.g., Confidential Business Information). 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 below.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

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

Table of Contents

I. Background
II. Public Comments and the EPA's Responses
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On February 13, 2013, the California Air Resources Board (CARB) submitted the *Final 2012 Air Quality Management Plan* (''2012 AQMP'') to EPA as a revision to the Los Angeles-South Coast Air Basin (''South Coast'') portion of the California State Implementation Plan (SIP).[1] [2] The South Coast Air Quality Management District (SCAQMD or District) and CARB prepared the 2012 AQMP in response to EPA's ''SIP call'' under section 110(k)(5) of the Clean Air Act (CAA or ''Act'') for a new attainment demonstration for the 1-hour ozone standard for South Coast and to meet other CAA requirements.[3]

In addition to the 2012 AQMP, CARB's February 13, 2013 SIP revision submittal includes the relevant CARB and SCAQMD board resolutions and other supporting material. The 2012 AQMP updates the approved 1997 8-hour ozone control strategy,[4] includes attainment demonstrations for the 1-hour ozone standard and the 2006 $PM_{2.5}$ standard, and includes demonstrations intended to address the vehicle-miles-traveled emissions offset requirements of CAA section 182(d)(1)(A) for the 1-hour ozone and 1997 8-hour ozone standards. With respect to the 1997 8-hour ozone standard, in adopting the 2012 AQMP, the SCAQMD indicated that, while the 2012 AQMP updates the approved 1997 8-hour ozone control strategy with new measures designed to reduce reliance on CAA section 182(e)(5) long-term (i.e., advanced technologies) measures for VOC and NO_X reductions, it is not intended as an update to other elements of the approved 8-hour ozone control plan.[5] The 2012 AQMP contains a number of SIP elements for a number of pollutants, but we are taking action today only on the portions of the 2012 AQMP that update the approved 1997 8-hour ozone control strategy from the 2007 AQMP and that provide an attainment demonstration for the 1-hour ozone standard. Specifically, the relevant elements of the 2012 AQMP covered by our action include:

- CARB's resolution of adoption (Resolution 13–3);
- SCAQMD's resolution of adoption (Resolution 12–19);
- The ozone-related portions of chapter 4 of the 2012 AQMP (''Control Strategy and Implementation'');
- Appendices IV–A (''District's Stationary Source Control Measures''),

[1] Under California law, CARB is the state agency that is responsible for submitting SIPs and SIP revisions to EPA. CARB is also responsible for the regulation of mobile sources in California. Regional air quality management districts, such as the South Coast Air Quality Management District (SCAQMD or ''District''), are responsible for developing and adopting regional air quality plans and for regulating stationary sources. Once adopted, the plans developed by the regional air quality management districts are submitted to CARB for adoption as part of the California SIP and then submitted to EPA for approval or disapproval under section 110 of the CAA.

[2] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[3] Ground-level ozone is an oxidant that is formed from photochemical reactions in the atmosphere between volatile organic compounds (VOC) and oxides of nitrogen (NO_X) (collectively referred to as the ozone precursors). The one-hour ozone national ambient air quality standard (NAAQS or ''standard'') is 0.12 parts per million (ppm). While the 1-hour ozone standard was revoked in 2005, certain SIP requirements, such as having an attainment demonstration, continue to apply in areas, such as the South Coast, that were designated as nonattainment for the 1997 8-hour ozone standards under EPA's ''anti-backsliding'' regulations governing the transition from the 1-hour ozone to the 1997 8-hour ozone standards. See 40 CFR 51.905.

[4] In 1997, EPA established an 8-hour ozone NAAQS of 0.08 ppm (''1997 8-hour ozone standard'') to replace the existing 1-hour ozone standard. SCAQMD and CARB prepared the 2007 AQMP and 2007 State Strategy (''2007 AQMP''), in part, to demonstrate attainment of the 1997 8-hour ozone standard and the ozone control strategy sets for the measures and provisions that the agencies intend to fulfill to meet the standard by the applicable attainment date. EPA approved the 2007 AQMP at 77 FR 12674 (March 1, 2012).

[5] See SCAQMD Governing Board Resolution No. 12–19 (December 7, 2012).

IV–B (''Proposed Section 182(e)(5) Implementation Measures''), and IV–C (''Regional Transportation Strategy and Control Measures''); and

• Appendix VII (''South Coast 2012 1-hour ozone attainment demonstration''), which includes 4 attachments, one of which includes a demonstration of reasonably available control measures (RACM).

In addition, EPA requested clarification of the commitments made by SCAQMD and CARB in connection with the 1-hour ozone attainment demonstration in the 2012 AQMP, and the two agencies responded with the following letters clarifying their respective commitments:

• Letter from Barry R. Wallerstein, D.Env, SCAQMD Executive Officer, to Jared Blumenfeld, Regional Administrator, EPA Region IX, May 1, 2014 (''Wallerstein Letter''); and

• Letter from Richard W. Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX, May 2, 2014 (''Corey Letter'').

For simplicity, in referring to the elements on which we are acting, we are using the term ''2012 AQMP'' even though we recognize that the 2012 AQMP includes other elements in addition to those covered in this final action.

On May 23, 2014 (79 FR 29712), the EPA proposed approval of the updated control strategy for the 1997 8-hour ozone standard and the 1-hour ozone attainment demonstration, including the related emissions inventories, control strategy, and photochemical modeling. In proposing approval of the 2012 AQMP, we agreed with the State that an attainment date of December 31, 2022 for the 1-hour ozone standard in the South Coast is appropriate in light of the severity of nonattainment and the extent to which emissions sources have already been controlled in the South Coast. References herein to ''the proposed rule'' or ''our proposed rule'' refer to our proposal published on May 23, 2014.

In connection with future baseline emissions in the South Coast as presented in the 2012 AQMP, we noted in our proposed rule that the baseline reflects regulations adopted by SCAQMD as of June 2012 and regulations adopted by CARB by August 2011.[6] As we noted in our proposed rule, as a general matter, EPA will approve a State plan that takes emissions reduction credit for a control measure only where EPA has approved the measure as part of the SIP, or in the case of certain on-road and nonroad (or ''off-road'') measures, where EPA has issued the related waiver of preemption or authorization under CAA section 209(b) or section 209(e). We also noted that, with certain exceptions, the relevant SCAQMD and CARB rules had been approved into the SIP, and with respect to the exceptions (recent amendments to SCAQMD Rules 1146, 1146.1, and 1147 and CARB's Consumer Products Regulation), we anticipated taking final action prior to taking final action on the revised 1-hour ozone attainment demonstration.[7] As anticipated, EPA has taken action on CARB's amended Consumer Product Rule and SCAQMD's amended Rules 1146 and 1146.1.[8] As such, the future baseline in the 2012 AQMP reflects, CARB and SCAQMD rules for which EPA has issued approvals, waivers, or authorizations and that are therefore enforceable for the purposes of the CAA.

The control strategy for the 1-hour ozone standard includes adopted measures (i.e., baseline measures that are reflected in the future baseline emissions inventories), committal measures, and new technology measures.[9] The overall control strategy and emissions reductions from the various components are presented in table 4 of our proposed rule, which we reprint here for ease of reference.

TABLE 4 (FROM PROPOSED RULE)—SUMMARY OF SOUTH COAST'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION CONTROL STRATEGY (SUMMER PLANNING INVENTORY (TPD))

Emissions Scenario	VOC	NO_X
Year 2008 Base Year[a]	593	754
Emission Reductions from Baseline Measures	153	419
Year 2022 Baseline	440	335
SCAQMD's New Aggregate Emissions Reduction Commitment	6	11
CARB's Existing Aggregate Emissions Reduction Commitment	7	24
New Technology Provisions	17	150
Year 2022 With Fulfillment of Commitments	410	150

[a] The modeling runs that were used to demonstrate attainment of the 1-hour ozone standard in the 2012 AQMP were based on the base year (2008) summer planning inventories (see table 1 from our proposed rule) with adjustments made for weekly and daily temperature variations. See 2012 AQMP, appendix VII, page VII–51.

With respect to the ozone control strategy, we proposed that the 2012 AQMP provides for implementation of all RACM and that the committal measures and new technology measures relied upon to achieve necessary emissions reductions were approvable. Specifically, we proposed to approve the new commitments by the SCAQMD to develop, adopt, submit and implement 15 new measures as expeditiously as possible to achieve, in the aggregate, emissions reductions of 6 tons per day (tpd) of VOC and 11 tpd of NO_X by January 1, 2022, and to substitute any other measures as necessary to make up any emission reduction shortfall.[10] The 15 new SCAQMD measures are summarized in table 5 of our proposed rule, which we reprint here for ease of reference. For a

[6] See 2012 AQMP, appendix III, page III–1–1.

[7] With respect to SCAQMD Rule 1147, we determined that the future baseline emissions in the 2012 AQMP reflect emissions reductions associated with the version of the rule approved by EPA at 75 FR 46845 (August 4, 2010) rather than the 2011 amended version, and thus, approval of the revised South Coast 1-hour ozone attainment demonstration in the 2012 AQMP does not depend upon EPA approval of the more recent amendments to that rule.

[8] The EPA Region IX Regional Administrator signed direct final and proposed rules for the amended Consumer Product Rule, and the amended Rules 1146 and 1146.1, on August 5, 2014 and July 25, 2014, respectively.

[9] ''New technology'' measures is the terms used herein to refer to the provisions of the 2012 AQMP that update the corresponding provisions in the 2007 AQMP that anticipate development of new control techniques or improvement of existing control technologies. See section 182(e)(5) of the Act.

[10] In our proposed rule, we erroneously described the SCAQMD's aggregate emissions reductions commitment as 5.8 tpd of VOC and 10.7 tpd of NO_X. However, as corrected, the commitment is for 6 tpd of VOC and 11 tpd of NO_X. See pages 7 and 8 of SCAQMD Resolution No. 12–19, table 4–11 of the 2012 AQMP, and the Wallerstein Letter.

detailed description of the measures to which the SCAQMD has committed, please see appendix VI–A of the 2012 AQMP.

TABLE 5 (FROM PROPOSED RULE)—DISTRICT CONTROL MEASURES IN 2012 AQMP 1-HOUR OZONE ATTAINMENT DEMONSTRATION

Number and title	Adoption	Implementation period	Reduction (tons per day (tpd)) by 2023	
			VOC	NO_X
CTS–01—Further VOC Reductions from Architectural Coatings (Rule 1113).	2015–2016	2018–2020	2–4	
CTS–02—Further Emission Reduction from Miscellaneous Coatings, Adhesives, Solvents and Lubricants.	2013–2016	2015–2018	1–2	
CTS–03—Further VOC Reductions from Mold Release Products.	2014	2016	0.8–2	
CMB–01—Further NO_X Reductions from RECLAIM	2015	2020		3–5
CMB–02—NO_X Reductions from Biogas Flares	2015	Beginning 2017		(1)
CMB–03—Reductions from Commercial Space Heating.	Phase I—2014 (Tech Assessment), Phase II—2016.	Beginning 2018		0.18
FUG–01—VOC Reductions from Vacuum Trucks	2014	2016	1	
FUG–02—Emission Reduction from LPG Transfer and Dispensing—Phase II.	2015	2017	1–2	
FUG–03—Further Reductions from Fugitive VOC Emissions.	2015–2016	2017–2018	1–2	
MCS–01—Application of All Feasible Measures	Ongoing	Ongoing	(1)	(1)
MCS–02—Further Emission Reductions from Green waste Processing (Chipping and Grinding Operations not associated with composting).	2015	2016	1	
MCS–03—Improved Start-up, Shutdown and Turnaround Procedures.	Phase I—2012 (Tech Assessment), Phase II—TBD.	Phase I—2013 (Tech Assessment), Phase II—TBD.	(1)	(1)
INC–01—Economic Incentive Programs to Adopt Zero and Near-Zero Technologies.	2014	Within 12 months after funding availability.		(1)
INC–02—Expedited Permitting and CEQA Preparation Facilitating the Manufacturing of Zero and Near-Zero Technologies.	2014–2015	Beginning 2015	(2)	(2)
EDU–01—Further Criteria Pollutant Reductions from Education, Outreach and Incentives.	Ongoing	Ongoing	(2)	(2)

Source: 2012 AQMP, table 4–4. Note: TBD = to be determined once the specific inventory and control approach for the measure are identified. N/A = not applicable given nature of the measure.
[1] TBD.
[2] N/A.

We noted in our proposed rule that CARB did not make a new aggregate emissions reduction commitment for the purposes of demonstrating attainment of the 1-hour ozone standard by December 31, 2022 in the South Coast, but instead relies on the EPA-approved aggregate emissions reduction commitment under the 2007 AQMP, which will provide 7 tpd of VOC and 24 tpd of NO_X reductions by January 1, 2022. Considered together, the SCAQMD's new aggregate emissions reductions commitment and CARB's existing aggregate emissions reductions commitment under the 2007 AQMP amount to 13 tpd of VOC and 35 tpd of NO_X for the purposes of 1-hour attainment in the South Coast by December 31, 2022.

We also proposed to approve, as authorized under section 182(e)(5) of the CAA, provisions that anticipate development of new control techniques or improvement of existing control technologies. The 2012 AQMP relies on such provisions to achieve emissions reductions of 17 tpd of VOC and 150 tpd of NO_X by January 1, 2022 for 1-hour ozone attainment demonstration purposes. Consistent with the requirements for CAA section 182(e)(5), we proposed to approve a related commitment by CARB to develop, adopt, and submit contingency measures by January 1, 2019 to be implemented if the anticipated technologies do not achieve the planned reductions.[11] The 2012 AQMP frames the section 182(e)(5) provisions in terms of specific measures referred to herein as ''new technology measures.'' These measures are summarized in table 6 of our proposed rule, which we reprint here for ease of reference. See 2012 AQMP, appendix IV–B for a detailed description of the measures.

[11] We interpret CARB's contingency measure commitment to be for January 1, 2019 based on the requirement in section 182(e)(5) that such measures must be submitted ''no later than 3 years before proposed implementation of the [advanced control technologies measures].''

TABLE 6 (FROM PROPOSED RULE)—SCAQMD AND CARB NEW TECHNOLOGY MEASURES IN 2012 AQMP

2012 AQMP Measure identifier	Title	Description
ONRD–01	Accelerated Penetration of Partial Zero-Emission and Zero Emission Vehicles.	This measure continues implementation of CARB's Clean Vehicle Rebate Project (CVRP) through 2023 with a minimum number of 1,000 vehicles per year to be incentivized through the CVRP, which provides individual vehicle incentives of up to certain amounts (e.g., $2,500 for full zero-emission vehicles) for clean vehicles.
ONRD–02	Accelerated Retirement of Older Light-Duty and Medium Duty Vehicles.	This measure calls for retirement of, at a minimum, 2,000 light and medium-duty vehicles per year to 2023, and gives first priority to pre-1992 model year vehicles identified as high emitter and that are off-cycle to California's Smog Check Program. Incentives are up to $2,500 per vehicle which could include a replacement voucher under CARB's Enhanced Fleet Modernization Program.
ONRD–03	Accelerated Penetration of Partial Zero-Emission and Zero Emission Light-Heavy- and Medium-Heavy-Duty Vehicles.	This measure seeks additional emissions reductions through the early introduction of electric hybrid vehicles and continues the state hybrid truck and bus voucher incentive project (HVIP). Incentives of up to $25,000 per vehicle are part of this measure. The measure's goal is to fund 1,000 hybrid and zero-emission vehicles each year to 2023.
ONRD–04	Accelerated Retirement of Older On-Road Heavy-Duty Vehicles.	This measure seeks additional emissions reductions from older, pre-2010 heavy-duty vehicles beyond the emission reductions targeted in CARB's Truck and Bus Regulation. A significant number of heavy-duty trucks have been replaced through Proposition 1B Goods Movement Emission Reduction Program funding, the Carl Moyer Program, and other local incentives programs. This measure continues these programs through 2023.
ONRD–05	Further Emission Reductions from Heavy-Duty Vehicles Serving Near-Dock Railyards.	This measure calls for CARB to adopt a regulation or other enforceable mechanism to further reduce emissions from near-dock railyard drayage trucks. The regulation or other enforcement mechanism would require, by 2020, all containers transported between the marine ports and the near-dock railyards to use zero-emission technologies.
OFFRD–01	Extension of the SOON Provision for Construction/Industrial Equipment.	This measure seeks to reduce emissions from older, high-emitting off-road diesel engines. Under this measure, incentive programs, such as the Carl Moyer Program and the SOON Provision of CARB's Off-Road rule, would continue to be used to fund equipment replacement and engine repower projects. This measure would extend the current SOON program beyond 2014 to 2023.
OFFRD–02	Further Emission Reductions from Freight Locomotives.	This measure carries forward the freight locomotive new technology measures from the 2007 AQMP and calls for replacing existing locomotive engines with Tier 4 engines beginning in 2015 such that by 2023, there will be at least 95% Tier 4 locomotives operating the South Coast.
OFFRD–03	Further Emission Reductions from Passenger Locomotives.	Metrolink's Board has adopted a locomotive replacement plan which includes the procurement of Tier 4 locomotive engines to replace its 30 Tier 0 locomotives over a three-year period. In addition, the replacement plans call for repowering the existing Tier 2 locomotives to Tier 4 emission levels, resulting in 100% Tier 4 locomotives by 2023.
OFFRD–04	Further Emission Reductions from Ocean-Going Marine Vessels While at Berth.	This measure focuses on ocean-going vessels not subject to CARB's shorepower regulation and seeks to deploy shorepower technologies for an additional 25 percent of the calls not subject to CARB's shorepower regulation.
OFFRD–05	Emission Reductions from Ocean-Going Marine Vessels.	This measure calls for incentives to be used to maximize the early introduction and preferential deployment of vessels to the San Pedro Bay Ports with cleaner/new engines meeting the new Tier 2 and Tier 3 IMO NO_X standards.
ADV–01	Actions for the Deployment of Zero and Near-Zero Emission On-Road Heavy-Duty Vehicles.	This measure includes two sets of actions. The first set involves the establishment of an optional NO_X exhaust emission standard that is at least 95 percent lower than the current 2010 on-road exhaust emissions standard. The second set is to develop zero-emission technologies for heavy-duty vehicles that can be deployed in the 2015 to 2035 timeframe.
ADV–02	Actions for the Deployment of Zero-Emission and Near-Zero Locomotives.	This measure describes actions needed to commercialize advanced zero-emission and near-zero emission technologies for locomotives that could be deployed in the 2020 to 2030 timeframe.
ADV–03	Actions for the Deployment of Zero-Emission and Near-Zero Cargo Handling Equipment.	This measure describes actions to demonstrate and commercialize advanced zero-emission and near-zero emission technologies for cargo handling equipment operated at marine ports, intermodal freight facilities, and warehouse distribution centers that could be deployed in the 2020 to 2030 timeframe.
ADV–04	Actions for the Deployment of Cleaner Commercial Harbor Craft.	This measure describes actions needed to commercialize advanced engine control technologies and hybrid systems for commercial harbor craft that could be deployed in the 2020 to 2030 timeframe.
ADV–05	Actions for Deployment of Cleaner Ocean-Going Marine Vessels.	This measure describes the actions needed to deploy retrofit technologies on existing Category 3 marine engines to achieve Tier 3 marine engine emissions standards.
ADV–06	Actions for the Deployment of Cleaner Off-Road Equipment.	This measure describes the actions needed to commercialize advanced zero-emission and near-zero emission technologies of off-road equipment that could be deployed in the 2020 to 2030 timeframe.

TABLE 6 (FROM PROPOSED RULE)—SCAQMD AND CARB NEW TECHNOLOGY MEASURES IN 2012 AQMP—Continued

2012 AQMP Measure identifier	Title	Description
ADV–07	Actions for the Deployment of Cleaner Aircraft Engines.	This measure describes the actions needed to develop, demonstrate, and commercialize advanced technologies, procedures, and sustainable alternative jet fuels that could be deployed in the 2020 to 2030 timeframe.

A more detailed discussion of the ozone NAAQS, ozone SIP plans for the South Coast, EPA's SIP call for a new 1-hour ozone attainment demonstration as well as the 2012 AQMP and our evaluation of how it meets the requirements of the CAA can be found in our proposed rule. The EPA is approving the 2012 AQMP based on our determination that it complies with applicable CAA requirements and provides for expeditious attainment of the 1-hour ozone standard in the South Coast.

II. Public Comments and the EPA's Responses

Our proposed rule provided a 30-day comment period. During this period, we received a comment letter from Earthjustice on behalf of a number of community and environmental groups, including Communities for a Better Environment, Natural Resources Defense Council, Physicians for Social Responsibility—Los Angeles, and Sierra Club (herein, referred to collectively as ''Earthjustice''); and a number of emails and attachments from a member of the public representing the Public Solar Power Coalition (''PSPC'' herein). The attachments from PSPC included a copy of the clerk's transcript of case documents from the Superior Court, Los Angeles County, to the Second District Court of Appeal upon appeal of *Eder* v. *South Coast Air Quality Management District* (SC 119641).[12] We provide our responses to the comments in the paragraphs below. We have organized the comments and responses under the related major topics.

One-Hour Ozone Attainment Date

Comment 1: Earthjustice asserts that EPA erred in relying on CAA sections 110(k)(5) and 172(a)(2) to set the South Coast's attainment deadline for the 1-hour standard and was required instead to use section 179(d)(3). Earthjustice further asserts that, if EPA had acted correctly, the attainment date would be no later than 2021 rather than 2022.

Response 1: This comment is not timely and is not relevant to the current rulemaking. The EPA established the new attainment date for the 1-hour ozone standard in the South Coast in our final SIP call rule, which was issued on January 7, 2013. See 78 FR 889 (''The SIP must provide for attainment of the 1-hour ozone NAAQS in the South Coast nonattainment area as expeditiously as practicable, but no later than five years from the effective date of today's rule, unless the State can demonstrate that it needs up to an additional five years to attain in light of the severity of the nonattainment problem and the availability and feasibility of control measures.'')

The 2012 AQMP provides a demonstration of attainment by December 31, 2022 and our proposed rule finds that an attainment date of December 31, 2022 is appropriate in light of the severity of the 1-hour ozone problem in the South Coast and the extent to which emission sources in the South Coast have already been controlled. See 79 FR 29712, at 29724 (May 23, 2014).

CAA Section 182(e)(5)

Comment 2: Earthjustice asserts that the plain language of the CAA does not allow for reliance on section 182(e)(5) after the attainment date. The Act requires states that plan to rely on CAA section 182(e)(5) measures to implement contingency measures ''adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to achieve . . . attainment by the applicable dates'' and that the applicable attainment date for ''extreme'' areas is November 15, 2010 pursuant to section 181(a)(1). With respect to the South Coast, Earthjustice argues that the contingency measures are de facto insufficient to achieve attainment by the applicable dates because the attainment date of November 15, 2010 has expired, and because it has expired, it is no longer possible to satisfy the requirements of section 182(e)(5). Thus, Earthjustice concludes that the 1-hour ozone attainment demonstration in the 2012 AQMP cannot rely on section 182(e)(5) measures.

Response 2: We disagree with the contention that the plain language of the CAA does not allow for reliance on section 182(e)(5) when a state fails to meet its initial attainment date and a new attainment date must be established. Section 182(e) expressly provides EPA with the authority to approve an attainment demonstration for ''extreme'' ozone areas that anticipates ''development of new control techniques or improvement of existing control technologies,'' referred to herein as ''new technology'' measures, if certain conditions are met. Nothing in this provision limits its application only to the initial designations and classification that occurred immediately following enactment of the CAA Amendments of 1990. The commenter does not explain why it is ''no longer possible'' to meet the conditions of section 182(e)(5), and we explain in the proposed rule why the State has met those requirements. See 79 FR at 29722–29724 (May 23, 2014).

Comment 3: Earthjustice argues that an area that fails to attain by its applicable attainment date should not be allowed to include CAA section 182(e)(5) measures because it gives states no incentive to close the ''black box'' within the attainment time frames of the Act. Earthjustice believes that allowing areas to rely on section 182(e)(5) provisions after the attainment time frames of the Act creates an incentive to continually roll ''black'' box reductions past the attainment date.

Response 3: We disagree that approving a revised 1-hour ozone attainment demonstration that relies on new technology measures under CAA section 182(e)(5) (and referred to as the ''black box'' by Earthjustice) removes the incentive for states to follow through on the related emissions reductions within the timeframes of the Act. First, if the new technology measures in the 2012 AQMP do not achieve the emissions reductions upon which the 1-hour ozone attainment demonstration relies (i.e., 17 tpd of VOC and 150 tpd

[12] In its emails to EPA, PSPC did not specify how the 500+ pages of clerk's transcript, included as attachments to their emails, are relevant to our May 23, 2014 proposed rule. PSPC's emails also include links to several Web sites and the emails indicate that the documents and studies available through these web links are to be included in the record. Again, however, PSPC did not specify how these materials relate to our proposed rule. Therefore, other than acknowledging receipt of the attachments and web links, EPA has no further response to them.

of NO_X), then CARB must submit contingency measures to make up for the shortfall. CARB has made a commitment to develop and submit such contingency measures by January 1, 2019.

Given the extent to which emissions sources in the South Coast are already controlled, development of section 182(e)(5) contingency measures will present a significant regulatory challenge to CARB that can only be avoided or reduced if the new technology measures achieve a significant portion, if not all, of the emissions reductions expected from them in the 2012 AQMP. Further, upon the effective date of today's action, the commitment submitted by CARB to submit such contingency measures will be part of the California SIP and thus enforceable by EPA or private citizens.

Comment 4: Earthjustice asserts that allowing the 1-hour ozone attainment demonstration in the 2012 AQMP to rely on section 182(e)(5) measures conflicts with the purpose of section 182(e)(5) because section 182(e)(5)(A) specifically precludes reliance on new technology measures to comply with emissions reductions necessary in the first ten years after enactment of the 1990 Amendments to the Act and thereby indicates Congress's intention that a 10-year period is too short to allow reliance on ''black box'' measures to comply with CAA requirements; because, as a practical matter, the shortened planning horizon for attainment in the 2012 AQMP does not provide the time necessary to develop and implement new technology measures; and because section 182(e)(5)(B) requires contingency measures to be submitted at least three years in advance of implementation of the measures if the anticipated technologies do not achieve the anticipated emissions reductions.

Earthjustice contends that emissions reductions must be in place by January 1, 2020 to provide the three years of clean data prior to an attainment date of December 31, 2022, which means that the contingency measures under CAA section 182(e)(5)(B) must be submitted by January 1, 2017, less than three years from the present. Given the contrast between the planning horizon for the 1-hour ozone standard in the 2012 AQMP and the longer (20-year) planning horizon for the initial South Coast AQMP established under the CAA Amendments of 1990, Earthjustice concludes that section 182(e)(5) measures cannot be relied upon for the 1-hour ozone attainment demonstration in the 2012 AQMP.

Response 4: First, the language of section 182(e)(5)(A) does not preclude reliance on new technology provisions in the new 1-hour ozone attainment demonstration. Section 182(e)(5)(A) is the first condition necessary to support reliance on new technology provisions, and to meet this condition, the EPA must find that such provisions ''are not necessary to achieve the incremental emission reductions required during the first ten years after November 15, 1990.'' Since the 10-year attainment period for the area runs from 2013 until January 1, 2022, by definition the State has met this condition. Given the plain language of the Act in this regard, there is no ambiguity to resolve and for which Congressional intent might be taken into consideration.

Second, with respect to the practical consideration of whether sufficient time is available to develop new technology measures to provide emissions reductions by January 1, 2022 to provide for attainment of the 1-hour ozone standard by December 31, 2022, we note that the processes used by the relevant air agencies to develop and implement the new technology measures are not new to the 2012 AQMP, but represent a continuation of the effort initiated in the wake of development of the 2007 AQMP for attainment of the 1997 8-hour ozone NAAQS and that is unfolding over a longer planning period, similar to that for the 1-hour ozone plan developed pursuant to the CAA Amendments of 1990. Third, with respect to the timeline for emissions reductions and submittal of contingency measures under the 2012 AQMP, we note that the deadline for emissions reductions necessary for attainment of the 1-hour ozone standard by December 31, 2022 is January 1, 2022, not January 1, 2020 as asserted by Earthjustice. We explain the basis for this timeframe in our response to comment #13. Given that all emission reductions necessary for attainment of the standard must be achieved by January 1, 2022, the contingency measures under CAA section 182(e)(5)(B) are due to EPA no later than January 1, 2019, not January 1, 2017.

Thus, CARB had about six years from adoption of the 2012 AQMP, and has about four years remaining from the date of this final action, to determine whether it will be able to achieve 17 tpd of VOC and 150 tpd of NO_X reductions in the South Coast for 1-hour ozone attainment demonstration purposes through the new technology measures or whether it will need to adopt alternative ''contingency'' measures to cover some or all of the necessary emissions reductions. This timeframe does not render application of section 182(e)(5) absurd; to the contrary, we believe that it is both practicable and reasonable.

Comment 5: Earthjustice asserts that CAA section 179 governs what happens when a region fails to meet an ozone standard, and that section 179 does not permit the use of section 182(e)(5) measures. Specifically, Earthjustice notes that section 179(d)(2) states that the new plan required under section 179 shall comply with sections 110 and 172 of the CAA and makes no reference to allowing for reliance on section 182(e)(5).

Response 5: This comment appears to take issue with EPA's previous final action determining that the South Coast had failed to attain the 1-hour ozone standard by the November 15, 2010 applicable attainment date. See 76 FR 82133, at 82145 (December 30, 2011). In that action, we were clear that the basis for our action was CAA sections 301(a) and 181(b)(2) and not section 179(c). Thus the new 1-hour ozone attainment demonstration is not governed by the requirements under section 179(d)(2). Regardless, we note that while section 179(d)(2) requires that the new SIP meet the requirements of CAA sections 110 and 172, it does not speak to nor preclude reliance on section 182(e)(5). We do not believe, and the commenter does not suggest, how a SIP for an ozone area classified as extreme would be inconsistent with the requirements of sections 110 and 172.

Comment 6: Even if reliance on CAA section 182(e)(5) were allowed, EPA's approval is arbitrary and capricious, contends Earthjustice, because EPA has not determined whether the section 182(e)(5) new technology measures will produce sufficient emission reductions to allow the South Coast to meet the attainment deadline. Earthjustice contends that over half of the proposed section 182(e)(5) measures in the 2012 AQMP have not been evaluated for their potential to reduce emissions. Additionally, Earthjustice asserts that, to rely on section 182(e)(5) measures to demonstrate attainment, the SIP must contain enforceable commitments from agencies responsible for developing and implementing the measures and that it is unclear from EPA's proposed rule whether such commitments have been made.

Response 6: We disagree that to approve the new technology provisions in the 2012 AQMP, we must determine that the identified new technology measures will in fact achieve the reductions necessary to attain the standard. Section 182(e)(5) contemplates that States will rely on measures not yet fully evolved and for that reason it is difficult to attribute a

specific tonnage reduction to such measures. The new technology provisions in the 2012 AQMP reflect greater specificity than the corresponding provisions from the 2007 AQMP, but do not provide evidence that they will produce sufficient emissions reductions to allow the South Coast to meet the attainment deadline for the 1-hour ozone standard. For many of the individual new technology measures, emissions reductions were not estimated because they depend upon funding levels, which are uncertain at this time.

The fact that the specific emissions reduction estimates for the individual new technology measures in the 2012 AQMP are not available, however, is immaterial. Section 182(e)(5) requires, as relevant here, that the State submit ''enforceable commitments to develop and adopt contingency measures'' to be implemented if the new technologies do not achieve the planned reductions. In this case, the 2012 AQMP is relying on 17 tpd of VOC and 150 tpd of NO_X reductions from the new technology provisions for 1-hour ozone attainment demonstration purposes. Such contingency measures must be ''adequate to produce emissions reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions . . . and attainment by the applicable dates.'' CARB has submitted the necessary commitment to develop, adopt and submit such contingency measures by January 1, 2019. See CARB Resolution 13–3 and Corey Letter dated May 2, 2014.

Although section 182(e)(5) does not require an enforceable commitment with respect to the new technology measures, we note that the State has identified the specific agencies that will be responsible for developing and implementing the controls or techniques anticipated under the individual new technology measures, and for the 2012 AQMP, the SCAQMD has identified such agencies for each of the new technology measures. In addition, as noted in connection with the 2007 AQMP, EPA, CARB, the SCAQMD and the San Joaquin Valley Unified Air Pollution Control District (SJVUACPD) have signed a memorandum of agreement committing the agencies to coordinate efforts to develop and test new sustainable technologies to accelerate progress in meeting air quality goals. See 76 FR 57872, at 57882 (September 16, 2011).

RACM

Comment 7: Earthjustice asserts that EPA's interpretation of RACM does not comport with the Clean Air Act's mandate for nonattainment area plans to provide for attainment of the NAAQS as ''expeditiously as practicable'' but no later than the applicable attainment date. Earthjustice bases this assertion on what it perceives to be the inconsistency between the ''expeditiously as practicable'' mandate and EPA guidance, which provides that, to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more. Earthjustice contends that the one-year condition is arbitrary and that it allows the states to avoid implementation of otherwise feasible and cost-effective control measures if implementation of those measures would not advance attainment by at least one year. Earthjustice also contends that it is arbitrary and capricious for EPA to rely on a guidance document that limits RACM to measures that advance attainment by one year as opposed to measure that may advance attainment by 9 months, 6 months, 3 months or even 1 month.

The one-year condition on the RACM requirement, Earthjustice asserts, is exacerbated by EPA taking this position for extreme ozone nonattainment areas that may rely on new technology measures under CAA section 182(e)(5), as well as areas that have missed their attainment dates ''because the region has not even identified enough control measures to attain in the first place.'' Earthjustice claims that the availability of CAA section 182(e)(5) in extreme areas means that measures can be rejected arbitrarily as not meeting RACM.

Lastly, Earthjustice suggests that EPA should instead change its interpretation of RACM in extreme nonattainment areas that rely on new technology measures to require a demonstration that all feasible control measures have been adopted, regardless of whether those control measures can be demonstrated to advance attainment by a year. It also requests clarification that RACM represents the minimum level of control states are required to demonstrate in nonattainment plans and that other measures are also required, as necessary or appropriate, to attain the NAAQS as expeditiously as practicable, regardless of whether the measures are considered RACM.

Response 7: EPA has consistently interpreted RACM as a collection of measures that would advance the attainment date by at least one year, and the courts have determined that the statutory RACM requirement is ambiguous and deferred to EPA's interpretation of the requirement. See *Sierra Club* v. *EPA,* 314 F.3d 735, 744–745 (5th Cir. 2002); see also *Sierra Club* v. *EPA,* 294 F.3d, 155, 162 (D.C. Cir. 2002). See also 57 FR 13498, 13560 (April 16, 1992); 44 FR 20372, 20374 (April 4, 1979).[13] In considering whether a collection of measures would advance the attainment date of an area, EPA has previously interpreted the phrase ''advance the attainment date'' as meaning that the attainment date would be advanced by at least one year. See e.g., 66 FR 57160, 57182 (November 14, 2001) (approval of Houston 1-hour ozone SIP); 66 FR 586 (January 3, 2001) (approval of DC area 1-hour ozone SIP); 76 FR 57872, 57877 (September 16, 2011)(proposed approval of South Coast 8-hour ozone SIP—finalized at 77 FR 12674 (March 1, 2012); and 77 FR 12652, 12659–12660 (March 1, 2012)(approval of San Joaquin Valley 8-hour ozone SIP). EPA's use of a one-year increment in determining whether a collection of measures would advance the attainment date is reasonable and consistent with the fact that determinations of attainment, or failure to attain, the 1-hour ozone standard are based on data compiled on a calendar-year basis (see 40 CFR 50.9 and appendix H to 40 CFR part 50). Furthermore, sections 172(a)(2)(C) and 181(a)(5) use one year as the increment by which attainment date extensions can be granted. Thus, requiring evaluation of whether control measures would advance attainment by an increment of one year is a reasonable approach.

Second, we disagree that the one-year condition for consideration of RACM in areas that rely on CAA section 182(e)(5) new technology measures to demonstrate attainment (and thus have not identified the specific measures needed to attain the standard) allows for arbitrary rejection of measures as not meeting RACM. So long as attainment plans developed for such areas identify base year emissions, an attainment date, and attainment-year emission targets, the emissions reductions associated with advancement of the attainment

[13] Additional relevant EPA guidance includes EPA memorandum titled ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' November 30, 1999, and EPA memorandum titled ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs,'' December 14, 2000.

date by one year can be calculated. Such an estimate can be used to judge whether a collection of reasonably available measures would advance attainment by one year notwithstanding the reliance on new technology measures. Thus, EPA's long-standing interpretation of RACM in terms of a collection of measures that would advance the attainment date of an area is not arbitrary as applied to areas that rely on section 182(e)(5) new technology measures.

In the case of the 1-hour ozone standard and the 2012 AQMP, the emissions reductions associated with advancement of the attainment date by one year are roughly 14 tpd of VOC and 46 tpd of NO_X based on 2008 base year emissions and the emissions targets for attainment by December 31, 2022. As described in appendix VI (''Reasonably Available Control Measures (RACM) Demonstration'') of the 2012 AQMP, the SCAQMD updated previous RACM demonstrations for purposes of evaluating all feasible control measure concepts for inclusion in the 2012 AQMP. Ultimately, SCAQMD adopted 15 new committal measures (see table 5 of our proposed rule) to ensure implementation of RACM. The collection of measures that were rejected as RACM were rejected because the hypothetical reductions were deemed non-quantifiable and thus they would not collectively advance the attainment date. See pages VI–18 and VI–19 of appendix VI of the 2012 AQMP.

Also, we disagree with the contention that EPA's one-year condition for consideration of RACM is absurd as applied to areas that have failed to attain the standard ''because the region has not even identified enough control measures to attain in the first place.'' RACM demonstrations and the attainment demonstrations upon which they rely are prepared, submitted and approved years before the applicable attainment date and are based on the best information available at the time. Notwithstanding approval of well-conceived and well-grounded RACM and attainment demonstrations that meet all CAA requirements, the area to which the demonstrations apply may still fail to attain the standard by the applicable attainment date for any number of reasons, such as assumptions regarding atmospheric chemistry or population forecasts that ultimately prove to be inaccurate when viewed in retrospect. Thus, the failure of an area to attain the standard by the applicable attainment date sheds no light on the appropriateness of the state's RACM demonstration or EPA approval of it years before but sets the stage for a new attainment date, and the type of RACM reevaluation and new attainment demonstration that is included in the 2012 AQMP.

Lastly, the EPA confirms that implementation of RACM as expeditiously as practicable represents the minimum level of control states are required to demonstrate in nonattainment plans. See CAA section 172(c)(1). We clarify that, in such plans, other measures are also required, as may be necessary or appropriate, to provide for attainment of the NAAQS ''by the applicable attainment date specified in this part.'' See CAA section 172(c)(6).

Comment 8: Even if EPA's interpretation of RACM is adequate, SCAQMD did not perform a proper RACM analysis because SCAQMD did not evaluate Indirect Source Rule Fees for RACM, which was a RACM commitment in the San Joaquin Valley.

Response 8: We disagree with the contention that SCAQMD's RACM demonstration for the 2012 AQMP was insufficient because it did not evaluate Indirect Source Rule (ISR) Fees. We recognize that the San Joaquin Valley air district has adopted, and EPA has approved, an ISR rule, Rule 9510 (''Indirect Source Review''), which includes an off-site fee element. However, in doing so, the air district and EPA acted under CAA section 110(a)(5). See 76 FR 26609 (May 9, 2011). Under that section of the CAA, EPA is prohibited from requiring states to include ISR programs in SIPs. Specifically, CAA section 110(a)(5)(A)(i) states in relevant part: ''Any State *may* include in a State implementation plan, but the Administrator *may not require* as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.'' [Emphasis added.] An ISR Fee rule would constitute an ISR program, and thus, EPA may not require SCAQMD to consider such a rule as a RACM.

Comment 9: Earthjustice asserts that SCAQMD must evaluate the programs that SCAQMD is planning to use as ''qualified'' programs to fund the Rule 317 section 172(e) fee equivalency account, as RACMs. Earthjustice claims that, under Rule 317, ''qualified'' programs represent those that are ''surplus'' to the plan requirements to attain the 1-hour ozone standard and that reduce emissions from mobile sources by providing incentive funding that advances the state of mobile source emission reduction technology, improves fuel and engine infrastructure, and accelerates fleet turnover. The programs included in Rule 317, the commenter explains, include School Bus Replacement, Truck Retrofits, Clean Vehicle Rebate Programs, Hybrid Truck and Bus Voucher Incentives, Natural Gas Taxi Cabs and Shuttle Vans, a Lawnmower Exchange program, and others. Earthjustice asserts that SCAQMD must analyze all of the programs cited in Rule 317 under the RACM analysis to determine whether the programs will individually or collectively advance the date of attainment to meet the requirements of section 172(c)(1), and that, if any of the programs meet the definition of RACM, the programs must be adopted by SCAQMD in enforceable form in the nonattainment plans to meet the 1-hour and 8-hour ozone standards in the South Coast.

Response 9: SCAQMD Rule 317 (''Clean Air Act Non-attainment Fees'') is intended to satisfy the requirements of sections 182 and 185 of the Act under EPA's anti-backsliding rules governing the transition from the revoked 1-hour ozone standard to the 1997 8-hour ozone standard. The rule utilizes an equivalency approach consistent with the principles of section 172(e) of the Act. EPA approved Rule 317 as a revision to the California SIP at 77 FR 74372 (December 14, 2012).

RACM identifies a certain level of control of existing emissions sources that must be adopted in legally enforceable form. Incentive programs by their nature are voluntary, i.e., not enforceable, and thus are not the types of programs that a State must consider in its RACM evaluation. Moreover, the types of sources to which the incentive programs in Rule 317 apply are mobile sources, and as explained in our proposed rule, 79 FR at 29720 (May 23, 2014), we have found that CARB's mobile source program continues to meet the RACM requirement for such sources. CARB's mobile source program includes regulations for many types of existing (i.e, in-use) vehicles and equipment, including the types of vehicles and equipment to which the Rule 317 incentive programs apply.

Comment 10: The commenter asserts that, because the South Coast failed to attain the 1-hour ozone NAAQS, the revised 1-hour ozone attainment plan must include such additional measures as EPA may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and

environmental impacts to comply with the requirements for such plans under CAA section 179(d)(2). The commenter states that pursuant to that provision, EPA should have prescribed potential feasible measures for achieving the standard, and suggests that the elimination of the exemption of methane from the definition of ''volatile organic compounds'' (VOCs) is one such potential measure that should have been prescribed and evaluated.

Response 10: In December 2011, we issued a final action determining pursuant to CAA sections 301(a) and 181(b)(2), that the South Coast had failed to attain the 1-hour standard by the applicable attainment date. We did not base that determination on section 179(c), and thus the plan requirements specified in CAA section 179(d) do not apply. Thus, this comment is not timely.

We note that EPA regulations exempt methane from the definition of VOC, 40 CFR 51.100(s), and the South Coast regulations are consistent with the EPA regulation. The EPA regulation exempting methane from the definition of ''VOC'' stems from the Agency's determination that methane is an organic compound that has negligible photochemical reactivity and thus need not be controlled for the purposes of reducing ground-level ozone concentrations. Independent of that, however, we recognize methane as a potent greenhouse gas and we note that many control measures that reduce VOC emissions have the co-benefit of reducing methane. Because EPA regulations exempt methane from the definition of VOC for the purpose of reduce ground-level ozone concentrations, it would not be appropriate for the State to rely on methane reductions as part of its plan to attain the 1-hour ozone NAAQS.

Enforceable Commitments

Comment 11: Earthjustice contends that EPA cannot approve California's reliance on section 172(c)(6) enforceable commitments because the state's proposed commitments are not enforceable and are insufficient to substitute for the credible emission reductions needed to demonstrate attainment. More specifically, Earthjustice notes that three of CARB's existing commitments in the 2012 AQMP do not have schedules for implementation, and without such schedules for implementation, CARB's measures are not ''independently enforceable'' under Ninth Circuit case law, citing *El Comite Para El Bienestar de Earlimart* v. *Warmerdam,* 539 F.3 1062, at 1071–1073 (9th Cir. 2008). The three CARB measures cited by Earthjustice include expanding passenger vehicle retirement, promoting cleaner ship engines and fuel, and adopting off-road recreational vehicle expanded emissions standards. In addition, Earthjustice contends that the SCAQMD's reservation of the right to substitute measures for the 15 specific measures adopted by SCAQMD to meet its emissions reduction commitment renders the measures unenforceable should the District choose to implement other, undisclosed measures.

Response 11: The 1-hour ozone attainment demonstration in the 2012 AQMP relies on existing CARB commitments approved by EPA in connection with the attainment demonstration for the 1997 8-hour ozone standard in the 2007 AQMP. More specifically, the 1-hour ozone attainment demonstration in the 2012 AQMP relies on the same commitments made by CARB, and approved by EPA, in connection with the 2007 AQMP to take certain defined measures to its Board for consideration and to achieve certain aggregate emissions reductions in certain years. In responses to comments in our final rule approving the commitments for the 8-hour ozone standard attainment demonstration, we addressed in detail the issue of enforceability of the commitments. See 77 FR 12674, at 12675–12677 (March 1, 2012). In short, however, we draw a sharp distinction between the commitments for the 2007 AQMP and the aspirational goals found to be unenforceable by certain courts. In contrast to an unenforceable aspirational goal, we found:

> The language in CARB's and the District's commitments . . . is specific; the intent of the commitments is clear; and the strategy of adopting measures to achieve the required reductions is completely within CARB's and the District's control. Furthermore . . . CARB and the District identify specific emission reductions that they will achieve, how they could be achieved and the time by which these reductions will be achieved, i.e., by the 2023 attainment year. 77 FR 12674, at 12676–12677 (March 1, 2012).

Although the excerpt from our March 2012 final rule refers to the commitments for the attainment year for the 1997 8-hour ozone standard, CARB also made similar types of commitments for certain interim years, including year 2020, and a similar rationale applies. See 77 FR at pages 12689–12692 (March 1, 2012).

As to commitments related to expanding passenger vehicle retirement, promoting cleaner ship engines and fuel, and adopting off-road recreational vehicle expanded emissions standards, we disagree that the CARB has failed to include schedules for implementation and that, therefore, the commitments are unenforceable. We discuss the commitments related to these three control strategies and the current status of implementation in the following paragraphs.

First, with respect to expanding passenger vehicle retirement, CARB's 2007 State Strategy calls for expanding the existing vehicle retirement program to vehicles that are off-cycle from their Smog Check inspections over an implementation period of 2008–2014.[14] In 2007, the California enacted the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 (Assembly Bill (AB) 118), which creates the Air Quality Improvement Program (AQIP). The Enhanced Fleet Modernization Program (EFMP), one of the AQIP programs, is a voluntary vehicle retirement program that is funded through a $1 increase in vehicle registration fees (roughly $30 million annually) and that broadens eligibility criteria beyond vehicle failure under the Smog Check program. The California Legislature recently extended the program through 2023 (AB 8). In June 2014, CARB proposed amendments to the EFMP that would improve the program by focusing the program on low-income participants, expanding program flexibility to improve participation, and ensuring that retired vehicles are functional, which should improve emissions benefits from the program.

Second, as to promoting cleaner ship engines and fuel, CARB committed to adopting regulations to require use of cleaner, low-sulfur fuel by ocean-going vessels (OGV) in transit within 24 miles of the California coast with implementation expected from 2007–2010.[15] In 2008, CARB adopted the OGV clean fuel (i.e., low sulfur) regulations, and later amended the regulations in 2011. CARB's OGV clean fuel regulation is expected to be supplanted in 2015 by equivalent fuel standards applicable to a much wider area (200 nautical miles) along the California coast under the 2010 amendments, adopted by the International Maritime Organization (IMO), to the International Convention for the Prevention of Pollution from Ships (MARPOL) designating the North American Emission Control Area (ECA).

[14] See CARB's *Proposed State Strategy for California's 2007 State Implementation Plan,* Release Date: April 26, 2007, pages 100–101.

[15] See CARB's *Proposed State Strategy for California's 2007 State Implementation Plan,* Release Date: April 26, 2007, pages 107–110.

MARPOL Tier III NO_X standards [16] will apply within the North American ECA to marine diesel engines that are installed on a ship constructed on or after January 1, 2016.

Third, as to adopting off-road recreational vehicle expanded emissions standards, CARB committed to bringing the emissions standards to its Board for consideration in 2013, with implementation schedules to be determined in the rulemaking process.[17] In July 2013, CARB adopted regulations establishing more extensive evaporative emissions standards for new off-highway recreational vehicles beginning with model year 2018.

As to the enforceability of SCAQMD's commitments in the 2012 AQMP, Earthjustice is correct that, in committing to develop, adopt, implement and submit the 15 measures listed in table 5 of the proposed rule, SCAQMD reserved the right to substitute measures where a listed measure is found to be infeasible and to otherwise substitute measures that can achieve equivalent reductions in the same adoption or implementation timeframes. See 2012 AQMP, pages 4–42 and 4–43. However, SCAQMD's commitment to the 15 defined measures is supported by the related, but independently enforceable, commitment to achieve aggregate emission reductions of 6 tpd of VOC and 11 tpd of NO_X by January 1, 2022. The aggregate emissions reduction commitment sufficiently ensures that the District will achieve the 6 tpd of VOC and 11 tpd of NO_X that is relied upon by the 1-hour ozone attainment demonstration, notwithstanding the potential for substitution of the individual measures by the SCAQMD.

Moreover, the SCAQMD has committed to be bound by a process with significant safeguards to ensure the integrity of the regulatory commitment. For instance, as described in more detail on pages 4–43 and 4–44 of the 2012 AQMP, the SCAQMD has defined ''infeasibility'' for the purposes of measure substitution, set cost-benefit thresholds triggering refined analysis, and established a public review and decision process. With such safeguards, we expect SCAQMD to make few substitutions, leaving most of the individual measures fully enforceable as part of the SIP.

Comment 12: Earthjustice challenges EPA's determination that CARB and SCAQMD are capable of fulfilling their aggregate emission reduction commitments, contending that such a determination conflicts with EPA's earlier finding that there are few opportunities to further reduce emissions and that six of SCAQMD's defined measures do not have estimated emission reductions. Without such reduction estimates, Earthjustice argues, EPA has no reason to believe that California will satisfy its emission reductions commitments.

Response 12: EPA's statement as to the few opportunities to further reduce emissions was made by way of explanation for why we believe that, with respect to the 2012 AQMP 1-hour ozone attainment demonstration, circumstances warrant the consideration of enforceable commitments as part of the attainment demonstration for the South Coast. We do not find this statement to be in conflict with our stated belief that CARB and SCAQMD are capable of fulfilling their aggregate emissions reductions ''given the State's and SCAQMD's efforts to date to reduce emissions and the proposed stationary and mobile source strategies found in the 2012 AQMP.'' The former simply acknowledges the unique challenges facing the air agencies in the South Coast relative to other parts of the country to identify source categories for additional controls beyond those already adopted and implemented, while the latter notes the long-term success of the air agencies in identifying sources to regulate emission sources to achieve the necessary reductions notwithstanding the challenges.[18]

Earthjustice is correct that SCAQMD does not provide emissions reduction estimates for six of the 15 measures that the District has committed to develop, adopt, submit and implement. However, as further explained in the proposed rule, 79 FR 29712, at 29721 (May 23, 2014), SCAQMD is relying on emissions reductions from the SOON program as well as the emissions reductions from the 15 individual measures to meet its aggregate emissions reduction commitment. The emissions reductions estimated from the SOON program plus those from the measures for which SCAQMD has provided emissions reduction estimates is equal to the aggregate commitment. See table 5 from the proposed rule and pages IV–B–30 through IV–B–32 from appendix IV–B of the 2012 AQMP. Thus, we continue to believe that SCAQMD is capable of fulfilling its aggregate emission reduction commitment to achieve necessary emissions reductions by January 1, 2022.

Comment 13: Earthjustice contends that CARB's and SCAQMD's emissions reduction commitments are not for a ''reasonable and appropriate period of time,'' because the agencies anticipate fulfilling their commitments by January 1, 2022—less than a year before the 1-hour ozone attainment deadline of December 31, 2022, and that EPA provides no support for the notion that the agencies will meet the December 31, 2022 deadline simply by fulfilling their commitments by January 1, 2022. To the contrary, Earthjustice argues, these agencies have not demonstrated that the emissions reduction would occur within a 12-month time frame. In addition, Earthjustice claims that the agencies could not achieve three years of clean data if the agencies wait until January 1, 2022 to fulfill commitments.

Response 13: First, SCAQMD and CARB have committed to achieve aggregate emissions reductions by January 1, 2022 and are already at work meeting that commitment, and thus, these agencies have more than seven years to fulfill the commitments and achieve the reductions necessary for attainment, not 12 months as suggested by the commenter.

Second, SCAQMD and CARB commitments to achieve emissions reductions by January 1, 2022 is consistent with the requirement to ensure that necessary emissions reductions are in place by the beginning of the ozone season immediately preceding the attainment deadline. Since the attainment deadline is December 31, 2022, the ozone season immediately preceding that deadline begins on January 1, 2022 for the South Coast.

Reductions necessary to demonstrate attainment by December 31, 2022 need not be in place three years before the deadline. The three-year record of clean data applies to an attainment *determination,* not to an attainment *demonstration,* the latter of which we are approving today. The *determination* of attainment required by CAA section 181(b)(2), which is made by reviewing

[16] The current Tier I NO_X standards range from 9.8 to 17 g/kW-h, depending on engine speed. The Tier II standards represent a 20 percent NO_X reduction below Tier I, and the Tier III standards represent an 80 percent NO_X reduction below Tier I.

[17] See CARB's *Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins,* Release Date: March 29, 2011, appendix B (''Rulemaking Calendar'').

[18] The full statement from our May 23, 2014 proposed rule regarding the few opportunities to further reduce emissions is: ''As a result of these State and District efforts, most sources in the South Coast nonattainment area are currently subject to stringent rules adopted and approved by EPA (or for which EPA has issued waivers or authorization in the case of CARB regulations) prior to the development of the 2012 AQMP, leaving few opportunities (and generally more technologically and economically challenging ones) to further reduce emissions.'' 79 FR 29712, at 29721 (May 23, 2014).

ambient air quality monitoring data after the attainment date, is distinctly different from the *demonstration* of attainment required by CAA section 182(c)(2), which is based on projections of future air quality levels and submitted before the attainment date.

For the 1-hour ozone standard, an attainment determination is based on monitored air quality levels in the three years preceding the attainment date. See 57 FR 13498, at 13506 (April 16, 1992). In contrast, an attainment demonstration is based on air quality modeling showing that projected emissions in the attainment year will be at or below the level needed to prevent violations of the relevant ambient air quality standard. For ozone, the attainment year is defined as the calendar year that includes the last full ozone season prior to the statutory attainment date. See 75 FR 10420, at 10431 (March 8, 2010) (Final approval of San Joaquin Valley 1-hour ozone attainment demonstration; later withdrawn at 77 FR 70376 (November 26, 2012) on other grounds). EPA has consistently interpreted the Act to require that the attainment demonstration show that air quality levels will be at or below the level of the standard in the attainment year and not for each of the three ozone seasons prior to the attainment date.

We believe this position is consistent with the ozone attainment provisions in subpart 2 of title 1, part D of the CAA. The program Congress crafted for ozone attainment does not require that all measures needed to attain the standard be implemented three years prior to the area's attainment date. For example, moderate areas were required by section 182(b)(1) to provide for VOC emissions reductions of 15 percent reduction by November 15, 1996 which was also the attainment date for these areas. For areas classified serious and above, CAA section 182(c)(2)(B) requires that ROP of 3 percent per year averaged over 3 years ''until the attainment date'' (a total of 9 percent reduction in emissions in the 3 years leading up to an area's attainment date). EPA does not believe that Congress intended these mandatory reductions to be in excess of what is needed to attain.

This position is also consistent with the attainment date extension provisions in CAA section 181(a)(5). Under this section, an area that does not have three years of data meeting the ozone standard by its attainment date, but has complied with all requirements and commitments pertaining to the area in the applicable implementation plan and has no more than one exceedance of the standard in the attainment year, may receive a one-year extension of its attainment date. Assuming these conditions are again met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three years of data indicating that it has attained the ozone standard.

EPA has consistently taken this position in guidance and in our approval of 1-hour ozone attainment demonstrations. Our ozone modeling guidance, which was issued less than a year after the 1990 CAA Amendments were enacted, requires States to model the ozone season before the attainment date and not the third ozone season before the attainment date.[19] The ozone attainment demonstrations that EPA has approved since the CAA Amendments of 1990 have been based on this modeling guidance and show that there will be no violations in the attainment year. See, for example, 61 FR 10921 (March 18, 1996) and 62 FR 1150 (January 8, 1997), proposed and final approval of California's attainment plans for 7 nonattainment areas; 66 FR 54143 (October 26, 2001), approval of Pennsylvania's 1-hour ozone attainment plan for the Philadelphia area; and 67 FR 30574 (May 7, 2002), approval of Georgia's 1-hour ozone attainment plan for Atlanta.

We took the same position on attainment demonstrations for the 8-hour ozone standard promulgated in 1997 when we promulgated regulations specifying the deadline for implementing emissions reductions for purposes of attainment of that standard. Specifically, 40 CFR 51.908(d) provides: ''For each nonattainment area, the State must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.'' ''Attainment year ozone season'' is defined as ''the ozone season immediately preceding a nonattainment area's attainment date.'' 40 CFR 51.900(g).

Third, we do not find that CARB's and SCAQMD's commitments to be for a reasonable and appropriate period of time simply because the aggregate emissions reductions will be in place at the beginning of ozone season prior to the attainment date, but also because the agencies have committed to take certain near-term regulatory actions in support of those emissions reductions commitments. More specifically, SCAQMD has committed to develop, adopt, and submit, and implement specific control measures as expeditiously as possible. SCAQMD's commitment includes adoption dates for the specific measures (the latest of which calls for adoption in 2016) and implementation dates. Likewise, CARB has committed to bring certain regulatory measures to its Board for action on a certain schedule.

Therefore, we continue to find the reliance of the 2012 AQMP on these commitments to be acceptable because, among other reasons, we find the commitments to be for a reasonable and appropriate period of time.

Sustainable Communities Strategy (SCS)

Comment 14: Earthjustice claims that the emissions reductions from SCAG's Sustainable Communities Strategy (SCS) have been included in the baseline but that such inclusion is not appropriate because SCAG has not provided any information that the claimed emissions reductions will come from enforceable measures nor has EPA approved the SCS as a control measure. Earthjustice contends that the SCS should be submitted as a control measure towards attainment of the 1-hour and 8-hour ozone standards in the South Coast.

Response 14: The SCS is a new requirement for Regional Transportation Plans (RTPs) in California pursuant to state law (Senate Bill 375). As described in the 2012 South Coast AQMP, the primary goal of the SCS is to provide a vision for future growth in Southern California that will decrease per capita greenhouse gas emissions from automobiles and light trucks through integrated transportation, land use, housing and environmental planning. This leads to strategies that can help reduce per capita vehicle miles traveled over the next 25 years. While the SCS is intended to reduce GHG emissions, it will also produce reductions in ozone precursors.

SCAG's most recent adopted RTP, the 2012–2035 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), reflects SCS principles to achieve per capita emission reduction targets. Earthjustice is correct that the baseline inventory for the South Coast 2012 AQMP includes emissions reductions from the RTP/SCS to the extent that it reflects the same population, employment, economic activity, vehicle and transit activity forecasts and transportation control measures as the RTP/SCS and those forecasts and measures are projected to result in lower transportation-related emissions than would have occurred under the RTP baseline case. However, because SCS strategies are fully

[19] See Chapter 6 (''Attainment Demonstrations'') of *Guideline for Regulatory Application of the Urban Air Shed Model* (July 1991, OAQPS, EPA).

integrated into the RTP/SCS, separate emissions reduction estimates attributable to land use pattern changes cannot reliably be made apart from those associated with the various forecasts, transportation projects, and TCMs in the RTP/SCS. Distinguishing between emissions reductions associated with the types of changes in land use development patterns associated with SCS principles from those associated with transportation projects and TCMs is confounded by the fact that, as noted in the 2012 South Coast AQMP, the regional transportation system is appropriately viewed on a systems-level basis, and not by its components, since each of the individual transportation improvements and strategies affect each other and the system.

In addition, to the extent that the RTP/SCS reflects land use policies, we note that we have historically allowed States to take into account land use policies in their baseline (as opposed to being specifically approved into the SIP) if those policies are not being relied on as part of the control strategy. Specifically, we state: ''EPA believes that it would be appropriate to include a specific land use policy in the land use assumptions made for the initial forecast [of future emissions] only if:

A. The policy meets one of the following conditions:

- It has already been adopted by an appropriate jurisdiction, or
- the policy is planned and there is an enforcing mechanism to ensure it will happen; and

B. The effects of the policy haven't already been accounted for in the land use assumptions—that is, you are not double counting.'' [20]

In this instance, to the extent that the RTP/SCS embodies certain land use policies, those policies are not being relied upon as part of the control strategy to demonstrate attainment of the 1-hour ozone standard in the South Coast by the applicable attainment date and are enforceable through mechanisms provided in SB 375, and the effects of the policies have not already been accounted for in the land use assumptions.

Solar Power

Comment 15: Noting ongoing litigation between PSPC and SCAQMD over the 2012 AQMP, PSPC calls for adoption by SCAQMD of rules to implement an Immediate Total Solar Conversion Plan, with full implementation by 2020, or 2023 at the latest, contending that that the Immediate Total Solar Conversion Plan is cost effective and represents reasonably available control technology (RACT), Best Available Control Technology (BACT), and Best Available Retrofit Control Technology (BARCT). PSPC asserts that California Health and Safety Code (CH&SC) section 40404.5 mandates a solar conversion plan within the South Coast.

Response 15: For ozone nonattainment areas classified as moderate or above, CAA section 182(b)(2) requires the implementation of provisions that require the implementation of RACT on all major stationary sources of VOC and for each VOC source category for which EPA has issued Control Techniques Guideline (CTG) documents. CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In extreme ozone nonattainment areas such as the South Coast, a major source is a stationary source that emits or has the potential to emit at least 10 tons of VOC or NO_X per year. CAA sections 182(e) and (f). The current rulemaking does not address the RACT SIP for the South Coast, thus the issue of whether a particular control is required for a specific source or source category is not pertinent to this rulemaking. With respect to the requirement to ensure implementation of emission limits representing BACT, we note that, for federal law purposes, BACT determinations are made in connection with preconstruction review and permitting of new major sources or major modifications of existing major sources under the provisions of the CAA and EPA regulations for the Prevention of Significant Deterioration (PSD). As such, BACT is relevant in the context of individual major source permit applications, but not in the context of EPA's action on the regional air quality plan.

Though not relevant to this rulemaking, we note that we are currently unaware of any sources that use solar power to control or limit VOC or NO_X emissions. SJVUAPCD has researched solar-powered aeration for green waste composting, but recent discussions with SJVUAPCD staff indicated that while this work shows promise, it is still in the research phase.

Lastly, our role in reviewing SIP revisions is to ensure that they meet the applicable requirements of federal law, not state law, and thus, the issue of whether state law, in this case, CH&SC section 40404.5, mandates a solar conversion plan within the South Coast and whether the 2012 AQMP complies with the provisions of CH&SC section 40404.5 is not relevant for the purposes of our review of the 2012 AQMP under CAA section 110(k).[21] Similarly, the term ''Best Available Retrofit Control Technology'' is a term established under state law, and thus is also not relevant to our action on the 2012 AQMP.[22]

III. Final Action

Under section 110(k) of the CAA, and for the reasons discussed above and in our May 23, 2014 proposal (see 79 FR 29712), the EPA is approving certain ozone-related portions of the 2012 South Coast AQMP as a revision to the California SIP. The relevant portions of the 2012 AQMP that are being approved include the updated control strategy for the 1997 8-hour ozone standard and the demonstration of attainment of the 1-hour ozone standard in the South Coast by December 31, 2022. In so doing, we are approving the following commitments and measures upon which the 1-hour ozone attainment demonstration relies as well as the State's reliance on the approved control strategy for the 1997 8-hour ozone standard:

- SCAQMD's commitments to develop, adopt, submit and implement the measures as summarized in table 5 of the proposed rule, subject to findings of infeasibility and measure substitution, and a commitment to meet aggregate emissions reductions targets of 6 tpd of VOC and 11 tpd of NO_X by January 1, 2022;
- The new technology provisions (summarized in table 6 of the proposed rule) through which the 2012 AQMP expects to achieve emissions reductions of 17 tpd of VOC and 150 tpd of NO_X in the South Coast by January 1, 2022; and
- CARB's commitment to submit contingency measures by January 1, 2019 as necessary to ensure that the emissions reductions from new technology measures are achieved.

In approving this SIP revision, EPA finds that an attainment date of

[20] EPA's *Improving Air Quality through Land Use Activities,* EPA420–R–01–001, January 2001), page 35. This guidance document can be found at the following Web site: *http://www.epa.gov/oms/stateresources/policy/transp/landuse/r01001.pdf.*

[21] CH&SC section 40404.5 states: ''The Legislature further finds and declares that the south coast district, in fulfilling its directive to require the use of best available control technology for new sources, and in consideration of the state policy to promote and encourage the use of solar energy systems, shall make reasonable efforts to incorporate solar energy technology into its air quality management plan in applications where it can be shown to be cost-effective.''

[22] BARCT is defined in CH&SC section 40406: ''As used in this chapter, ''best available retrofit control technology'' means an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source.''

December 31, 2022 is appropriate in light of the severity of the 1-hour ozone problem in the South Coast and given the extent to which emissions sources in the South Coast have already been controlled and the difficulty of developing regulations and controlling additional emissions. EPA also finds that the South Coast 1-hour ozone attainment demonstration is based on reasonable estimates and forecasts of ozone precursor emissions and appropriate photochemical modeling techniques and assumptions and an acceptable control strategy.

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: August 13, 2014.

Jared Blumenfeld,

Regional Administrator, EPA 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)(439) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(439) The following plan was submitted on February 13, 2013, by the Governor's designee.

(i) [Reserved]

(ii) Additional material.

(A) California Air Resources Board.

(*1*) Resolution 13–3, dated January 25, 2013, adopting the Final 2012 Air Quality Management Plan (December 2012) prepared by the South Coast Air Quality Management District.

(*2*) Letter from Richard W. Corey, Executive Officer, California Air Resources Board, dated May 2, 2014.

(B) South Coast Air Quality Management District.

(*1*) Governing Board Resolution No. 12–19, dated December 7, 2012, adopting the Final 2012 Air Quality Management Plan.

(*2*) The following portions of the Final 2012 Air Quality Management Plan (December 2012): Ozone-related portions of chapter 4 (''Control Strategy and Implementation''); Appendix IV–A (''District's Stationary Source Control Measures''); Appendix IV–B (''Proposed Section 182(e)(5) Implementation Measures''); Appendix IV–C (''Regional Transportation Strategy and Control Measures''); and Appendix VII (''1-Hour Ozone Attainment Demonstration'').

(*3*) Letter from Barry R. Wallerstein, D.Env, Executive Officer, South Coast Air Quality Management District, May 1, 2014.

[FR Doc. 2014–20790 Filed 9–2–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0823; FRL–9915–85–Region 9]

Approval of Air Quality Implementation Plan Revisions; State of California; South Coast VMT Emissions Offset Demonstrations

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan revision submitted by the State of California to meet the vehicle miles traveled emissions offset requirement under the Clean Air Act for the 1-hour ozone and 1997 8-hour ozone national ambient air quality standards in the Los Angeles-South Coast Air Basin (''South Coast''). The EPA is approving this revision because it demonstrates that California has put in place specific enforceable transportation control strategies and transportation control measures to offset the growth in emissions from the growth in vehicle miles traveled and vehicle trips in the South Coast, and thereby meets the applicable requirements of the Clean Air Act.

DATES: This final rule is effective on October 3, 2014.

ADDRESSES: The EPA has established a docket for this action: Docket ID No. EPA–R09–OAR–2013–0823. 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. 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: John Ungvarsky, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3963, *ungvarsky.john@epa.gov.*

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

Table of Contents

I. Summary of Proposed Action
A. Regulatory Background
B. CARB's Submittal
C. The EPA's Proposed Approval
II. What comments did the EPA receive on the proposed rule?
III. What action is the EPA taking?
IV. Statutory and Executive Order Reviews

I. Summary of Proposed Action

On May 23, 2014 (79 FR 29705), under section 110(k) of the Clean Air Act (Act or CAA), the EPA proposed approval of a submittal dated February 13, 2013 from the California Air Resources Board (CARB) of a revision to the California state implementation plan (SIP) for the South Coast. The SIP revision includes demonstrations intended to show compliance with the vehicle-miles-traveled emissions offset element of CAA section 182(d)(1)(A). The following paragraphs summarize the regulatory background, CARB's submittal, and the EPA's rationale for proposing approval. For additional details concerning these topics, please see our May 23, 2014 proposed rule.

A. Regulatory Background

The specific CAA requirement that is relevant for the purposes of this action is section 182(d)(1)(A), which applies in ozone nonattainment areas classified as ''Severe'' or ''Extreme,'' and, in relevant part, requires the state, if subject to its requirements, to ''submit a [SIP] revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area.'' [1] Herein, we use ''VMT'' to refer to vehicle miles traveled or vehicle trips, and refer to the related SIP requirement as the ''VMT emissions offset requirement.'' In addition, we refer to the SIP revision intended to demonstrate compliance with the VMT emissions offset requirement as the ''VMT emissions offset demonstration.''

The South Coast [2] is an ''Extreme'' ozone nonattainment area for both the revoked 1-hour ozone national ambient air quality standard (standard or NAAQS) and the 1997 8-hour ozone standard, and thus, the State of California is required to submit SIP revisions that include VMT emissions offset demonstrations for the South Coast for both ozone standards.

In 2008, to comply with the VMT emissions offset requirement for the 1-hour ozone standard, the South Coast Air Quality Management District (SCAQMD) submitted a demonstration showing decreases in aggregate year-over-year motor vehicle emissions in the South Coast from a base year (1990) through the applicable attainment year (2010). The following year, the EPA approved the South Coast 1-hour ozone VMT emissions offset demonstration as meeting the VMT emissions offset requirement of CAA section 182(d)(1)(A). See 74 FR 10176 (March 10, 2009). The EPA also approved the South Coast VMT emissions offset demonstration submitted in connection with the area's ''Extreme'' classification for the 1997 8-hour ozone standard. See 77 FR 12674 (March 1, 2012). Once again, the approved demonstration showed decreases in aggregate year-over-year motor vehicle emissions in the South Coast from a base year through the applicable attainment year.

In approving the South Coast VMT emissions offset demonstrations in 2009 and 2012, the EPA applied its then-longstanding interpretation of the VMT emissions offset requirement, first explained in guidance in the General Preamble to Title I of the Clean Air Act (see 57 FR 13498, at 13521–13523, April 16, 1992), that no transportation control measures are necessary if aggregate motor vehicle emissions are projected to decline each year from the base year of the plan to the attainment year. See 74 FR 10176, at 10179–10180 (March 10, 2009); 76 FR 57872, at 57889 (September 16, 2011). However, in response to a legal challenge brought in the U.S. Court of Appeals for the Ninth Circuit, the Court ruled against the EPA's approval of the South Coast VMT emissions offset demonstration for the 1-hour ozone standard, determining that the EPA incorrectly interpreted the statutory phrase ''growth in emissions'' in section 182(d)(1)(A) as meaning a growth in ''aggregate motor vehicle emissions'' versus a growth solely from VMT. Essentially, the Court ruled that additional transportation control measures are required whenever vehicle emissions are projected to be higher than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing. However, the Court acknowledged that ''clean car technology'' advances could result in

[1] CAA section 182(d)(1)(A) includes three separate elements. This final action relates only to the first element of CAA section 182(d)(1)(A) (i.e., the VMT emissions offset requirement).

[2] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. The South Coast is home to approximately 17 million people, has a diverse economic base, and contains one of the highest-volume port areas in the world. For a precise description of the geographic boundaries of the South Coast, please see 40 CFR 81.305.

there being no increase in emissions even in the face of VMT growth, which would then allow VMT to increase without triggering the requirement to adopt offsetting transportation control measures. *Association of Irritated Residents* v. *EPA,* 632 F.3d 584, at 596–597 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012.

Based on this reasoning, the Court remanded the approval of the South Coast VMT emissions offset demonstration for the 1-hour ozone standard back to the EPA for further proceedings consistent with the opinion. In response, we withdrew our approval of the South Coast VMT emissions offset demonstration for the 1-hour ozone standard and disapproved it. See 78 FR 18849 (March 28, 2013). Furthermore, because our approval of the South Coast VMT emissions offset demonstration for the 1997 8-hour ozone standard was predicated on the same rationale as the corresponding South Coast demonstration for the 1-hour ozone standard that was rejected by the Ninth Circuit, we withdrew our approval of the South Coast VMT emissions offset demonstration for the 1997 8-hour ozone standard and disapproved it as well. *Id.* Our disapproval of the previous South Coast VMT emissions offset demonstrations triggered sanctions clocks under CAA section 179(a) that would lead to sanctions within a certain period of time unless California submitted, and the EPA approved, SIP revisions that addressed the deficiency upon which the disapproval was based.

In the wake of the decision in the *Association of Irritated Residents* case cited above, and in addition to withdrawing our approval of the previous South Coast VMT emissions offset demonstrations and disapproving the same, the EPA issued a guidance document, *Guidance on Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled* (herein referred to as the ''August 2012 guidance''), which includes a revised methodology for states to use in their VMT emissions offset demonstrations.[3] The guidance discusses the meaning of the terms, ''transportation control strategies'' (TCSs) and ''transportation control measures'' (TCMs), and recommends that both TCSs and TCMs be included in the calculations made for the purpose of determining the degree to which any hypothetical growth in emissions due to growth in VMT should be offset. Generally, TCSs is a broad term that encompasses many types of controls including, for example, motor vehicle emission limitations, inspection and maintenance (I/M) programs, alternative fuel programs, other technology-based measures, and TCMs, that would fit within the regulatory definition of ''control strategy.'' See, e.g., 40 CFR 51.100(n). TCMs are defined at 40 CFR 51.100(r) as meaning ''any measure that is directed toward reducing emissions of air pollutants from transportation sources. Such measures include, but are not limited to those listed in section 108(f) of the Clean Air Act[,]'' and generally refer to programs intended to reduce the VMT, the number of vehicle trips, or traffic congestion, such as programs for improved public transit, designation of certain lanes for passenger buses and high-occupancy vehicles (HOVs), trip reduction ordinances, and similar programs.

The August 2012 guidance explains how states may demonstrate that the VMT emissions offset requirement is satisfied in conformance with the Court's ruling. States are recommended to estimate emissions for the nonattainment area's base year and the attainment year. One emission inventory is developed for the base year, and three different emissions inventory scenarios are developed for the attainment year. For the attainment year, the state would present three emissions estimates, two of which would represent hypothetical emissions scenarios that would provide the basis to identify the ''growth in emissions'' due solely to the growth in VMT, and one that would represent projected actual motor vehicle emissions after fully accounting for projected VMT growth and offsetting emissions reductions obtained by all creditable TCSs and TCMs. See the August 2012 guidance for specific details on how states might conduct the calculations.

B. CARB's Submittal

On February 13, 2013, in response to the EPA's final disapproval of the previous South Coast VMT emissions offset demonstrations, CARB submitted revised South Coast VMT emissions offset demonstrations for the 1-hour ozone and 1997 8-hour ozone standards. CARB then provided supplemental information and analysis on April 3, 2014.

C. The EPA's Proposed Approval

As noted above, on May 23, 2014 (79 FR 29705), the EPA proposed approval of the revised South Coast VMT emissions offset demonstrations submitted by CARB to meet the CAA section 182(d)(1)(A) VMT emissions offset requirement for the 1-hour ozone and 1997 8-hour ozone standards in the South Coast. The EPA proposed to approve the revision because it demonstrated that California had put in place specific enforceable TCSs and TCMs to offset the growth in emissions from the growth in VMT and vehicle trips in the South Coast, and thereby met the applicable requirements in CAA section 182(d)(1)(A). In addition, based on our proposed approval of the VMT emissions offset demonstrations, we issued an interim final determination that deferred the imposition of sanctions triggered by our March 28, 2013 disapproval of previous versions of the South Coast VMT emissions offset demonstrations. See 79 FR 29680 (May 23, 2014).

Our full evaluation of the revised South Coast VMT emissions offset demonstrations for the 1-hour ozone and 1997 8-hour ozone standards can be found in our May 23, 2014 proposed rule. In summary, the results from the State's VMT emissions offset calculations establish projected actual attainment-year VOC emissions of 65 tons per day (tpd) for the 1-hour standard demonstration and 62 tpd for the 1997 8-hour standard demonstration. The State then compared these projected actual emissions values against the attainment year scenario for no growth in VMT and trips and no additional TCMs or TCSs. This calculation is also referred to as the ''VMT offset ceiling.'' By comparing the projected actual attainment year emissions against the VMT offset ceiling, the State (along with the EPA and the public) can determine whether additional TCMs or TCSs would need to be adopted and implemented in order to offset any increase in emissions due solely to VMT. Because the projected actual emissions in both the 1-hour standard demonstration and the 1997 8-hour standard demonstration are less than the corresponding VMT offset ceiling emissions, the State concluded that the demonstration shows compliance with the VMT emissions offset requirement and that there are sufficient adopted TCSs and TCMs to offset the growth in emissions from the growth in VMT in the South Coast for

[3] Memorandum from Karl Simon, Director, Transportation and Climate Division, Office of Transportation and Air Quality, to Carl Edland, Director, Multimedia Planning and Permitting Division, EPA Region 6, and Deborah Jordan, Director, Air Division, EPA Region 9, August 30, 2012.

both the 1-hour and 1997 8-hour ozone standards.[4]

Based on our review of the State's submittal, including the technical supplement, we found the State's analysis to be acceptable and agreed that the State had adopted sufficient TCSs and TCMs to offset the growth in emissions from growth in VMT and vehicle trips in the South Coast for the purposes of the 1-hour ozone and 1997 8-hour ozone standard. As such, we found that the revised South Coast VMT emissions offset demonstrations complied with the VMT emissions offset requirement in CAA section 182(d)(1)(A), and therefore, we proposed approval of the revised South Coast VMT emissions offset demonstrations for the 1-hour ozone and 1997 8-hour ozone standards as a revision to the California SIP.

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

Our May 23, 2014 proposed rule provided for a 30-day comment period. During this period, we received one comment: an email from a private citizen representing the Public Solar Power Coalition (PSPC). We provide our response to this comment below.

Comment: PSPC, noting ongoing litigation over the 2012 South Coast Air Quality Management Plan, requests that sanctions be imposed on California and the District. PSCP also calls for adoption by SCAQMD of an Immediate Solar Conversion Plan as a control measure, with full implementation by 2020 at the latest, contending that that the Immediate Solar Conversion Plan is cost effective and represents RACT/RACM. PSPC also requested a 60-day extension of the comment period to allow more time to get the more recent information into the records.

Response: Our proposed rule relates to the South Coast VMT offset demonstration submitted by CARB as a revision to the California SIP to address the VMT-related requirements of CAA section 182(d)(1)(A) for the South Coast ozone nonattainment area for the 1-hour and 1997 8-hour ozone standards. Section 182(d)(1)(A) requires states to submit SIP revisions for such areas that identify and adopt specific TCSs and TCMs to offset any growth in emissions due to growth in VMT in such areas.

In our proposed rule, we concluded that, with the TCSs and TCMs put in place by the various relevant state and regional agencies, the required demonstrations have been made. PSPC does not challenge our conclusion but rather seeks to compel the state to adopt a specific additional control measure referred to by PSPC as the Immediate Solar Conversion Plan. However, the EPA's role in reviewing SIPs and SIP revisions is to ensure that the states meet the requirements of the CAA, and California has demonstrated how it meets the requirement without adoption and implementation of the Immediate Solar Power Conversion Plan. Therefore, we have no authority to require California to adopt and implement such a plan to comply with CAA section 182(d)(1)(A). Furthermore, because we have concluded that California has met the applicable requirements, sanctions would not be authorized under the CAA.

Lastly, we have decided not to extend the comment period because further information concerning the Immediate Solar Power Conversion Plan would not change our conclusion that California has submitted a SIP revision that meets the requirements of CAA section 182(d)(1)(A) for the South Coast and would not, therefore, provide a basis for us to reconsider our approval of the SIP revision under CAA section 110(k).

III. What action is the EPA taking?

Under CAA section 110(k)(3), for the reasons set forth above and in greater detail in the proposed rule, the EPA is approving CARB's submittal dated February 13, 2013 of the revised South Coast VMT emissions offset demonstrations[5] for the 1-hour ozone and 1997 8-hour ozone standards, as supplemented by CARB on April 3, 2014, as a revision to the California SIP. We are approving this SIP revision because it demonstrates that California has put in place specific enforceable transportation control strategies and transportation control measures to offset the growth in emissions from the growth in VMT and vehicle trips in the South Coast for both the 1-hour ozone and 1997 8-hour ozone standards, and thereby meets the applicable requirements in section 182(d)(1)(A) of the Clean Air Act.

Upon the effective date of today's final approval, all sanctions and sanctions clocks that were triggered upon our final disapproval at 78 FR 18849 (March 28, 2013) of previous versions of the South Coast VMT emissions offset demonstrations, and deferred upon our interim final rule at 79 FR 29680 (May 23, 2014), are permanently terminated.

IV. Statutory and Executive Order Reviews

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 a state plan revision as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this final action:

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

[4] As described in the EPA's May 23, 2014 proposed rule, the offsetting VOC emissions reductions from the TCSs and TCMs put in place after the respective base year can be determined by subtracting the projected actual emissions estimates from the no action emissions estimates. For the purposes of the 1-hour ozone demonstration, the offsetting emissions reductions, 423 tpd (488 tpd minus 65 tpd), exceed the growth in emissions from growth in VMT and vehicle trips, 176 tpd (488 tpd minus 312 tpd). See table 1 on page 29710 of our May 23, 2014 proposed rule. For the purposes of the 8-hour ozone demonstration, the offsetting emissions reductions, 53 tpd (115 tpd minus 62 tpd), exceed the growth in emissions from growth in VMT and vehicle trips, 26 tpd (115 tpd minus 89 tpd). See table 2 on page 29710 of our May 23, 2014 proposed rule.

[5] Contained in the appendix VIII (''Vehicle Miles Traveled Emissions Offset Demonstration'') of the SCAQMD's Final 2012 Air Quality Management Plan.

disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: August 13, 2014.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

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)(439)(ii)(A)(*3*) and (c)(439)(ii)(B)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(439) * * *

(ii) * * *

(A) * * *

(*3*) Letter and enclosures from Lynn Terry, Deputy Executive Officer, California Air Resources Board, dated April 3, 2014, providing supplemental information related to Appendix VIII (''Vehicle Miles Traveled Emissions Offset Demonstration'') of the Final 2012 Air Quality Management Plan.

(B) * * *

(*4*) Appendix VIII (''Vehicle Miles Traveled Emissions Offset Demonstration'') (December 2012) of the Final 2012 Air Quality Management Plan.

[FR Doc. 2014–20791 Filed 9–2–14; 8:45 am]

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Vol. 79, No. 170

Wednesday, September 3, 2014

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51887–52164 2
52165–52542 3

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR

Proposed Rules:
761 52239
762 52239
763 52239
764 52239
765 52239
766 52239
767 52239
770 52239
772 52239
773 52239
774 52239
799 52239
1436 52239
1940 52239

14 CFR

25 ..... 52165, 52169
39 ..... 52172, 52174, 52177, 52181, 52184, 52187, 52190
71 ..... 51887, 52192, 52194
97 ..... 51888, 51891

Proposed Rules:
39 ..... 52260, 52263, 52267, 52270
71 ..... 51919, 51920

17 CFR

Proposed Rules:
270 51922
274 51922

21 CFR

864 52195

Proposed Rules:
172 51922
182 51922

22 CFR

22 52197

23 CFR

Proposed Rules:
450 51922

24 CFR

500 51893
501 51893
502 51893
503 51893
504 51893
505 51893
506 51893
507 51893
508 51893
509 51893
510 51893
511 51893
572 51893
585 51893
590 51893
597 51893
598 51893

27 CFR

73 52198

Proposed Rules:
9 52273

32 CFR

Proposed Rules:
286 52500

33 CFR

100 51895
147 51898
165 52199

34 CFR

Proposed Rules:
Ch. VI 52273

40 CFR

9 51899
52 ..... 51913, 52420, 52426, 52439
62 52201
81 52205
180 ..... 52210, 52215
271 52220
721 51899

Proposed Rules:
52 51923
62 52275
271 52275

43 CFR

2 51916

Proposed Rules:
2 51926

47 CFR

25 52224
73 52225
97 52226

49 CFR

Proposed Rules:
613 51922

50 CFR

20 52226
648 51917

Proposed Rules:
223 ..... 51929, 52276
648 52293

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 13, 2014

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